

CLERK'S COPY.

Vol. III

TRANSCRIPT OF RECORD

537028

163

on L.C.

Supreme Court of the United States

OCTOBER TERM, 1942

No. 7

FREDERICK H. ECKER, JOHN W. STEDMAN AND REEVE SCHLEY,
CONSTITUTING INTERNATIONAL BONDHOLDERS COMMITTEE,
PETITIONERS, *Ex parte*

WESTERN PACIFIC RAILROAD CORPORATION, A. C. JAMES CO.,
THE RAILROAD CREDIT CORPORATION, ET AL.

No. 8

CROCKER FIRST NATIONAL BANK OF SAN FRANCISCO AND
SAMUEL ARMSTRONG, AS TRUSTEES UNDER THE WESTERN
PACIFIC RAILROAD COMPANY FIRST MORTGAGE, DATED JUNE
28, 1918, PETITIONERS,

WESTERN PACIFIC RAILROAD CORPORATION, THE WESTERN
PACIFIC RAILROAD COMPANY, IRVING TRUST COMPANY, ETC.,
ET AL.

No. 20

THE WESTERN PACIFIC RAILROAD COMPANY, PETITIONER,

FREDERICK H. ECKER, ET AL.

No. 33

RECONSTRUCTION FINANCE CORPORATION, PETITIONER,

WESTERN PACIFIC RAILROAD CORPORATION, A. C. JAMES CO.,
ET AL.

No. 61

IRVING TRUST COMPANY, AS SUBSTITUTED TRUSTEE UNDER
THE GENERAL AND REFUNDING MORTGAGE OF WESTERN
PACIFIC RAILROAD COMPANY, PETITIONER,

CROCKER FIRST NATIONAL BANK OF SAN FRANCISCO, ET AL.,
ETC.

ON WRITS OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS
FOR THE NINTH CIRCUIT

PETITIONS FOR CERTIORARI FILED

DECEMBER 30, 1941.
JANUARY 17, 1942.
FEBRUARY 23, 1942.
MARCH 30, 1942.

No. 9714

United States
Circuit Court of Appeals

For the Ninth Circuit.

In the Matter of

**THE WESTERN PACIFIC RAILROAD COMPANY, a cor-
poration, Debtor.**

**WESTERN PACIFIC RAILROAD CORPORATION, a cor-
poration, THE WESTERN PACIFIC RAILROAD COM-
PANY, a corporation and IRVING TRUST COMPANY,
a corporation, as substituted Trustee under the General
and Refunding Mortgage of Western Pacific Railroad
Company, A. C. JAMES CO., a corporation, THE RAIL-
ROAD CREDIT CORPORATION, a corporation,
Appellants,**

vs.

**INSTITUTIONAL BONDHOLDERS COMMITTEE and
RECONSTRUCTION FINANCE CORPORATION,
Appellees.**

Transcript of Record

**(Excluding Certain Portions not Printed, in Accordance with
Stipulation and Order.)**

**In Six Volumes
VOLUME III
Page 963 to 1432**

**Upon Appeals from the District Court of the United
States for the Northern District of California,
Southern Division.**

[Title of District Court and Cause.]

**OBJECTIONS OF THE WESTERN PACIFIC
RAILROAD COMPANY, THE DEBTOR
HEREIN, TO PLAN OF REORGANIZA-
TION CERTIFIED TO THIS COURT BY
THE INTERSTATE COMMERCE COMMIS-
SION, AND CLAIM OF SAID DEBTOR
FOR EQUITABLE TREATMENT.**

The Western Pacific Railroad Company, the Debtor herein, pursuant to Subsection (é) of Section 77 of the Act of Congress commonly known as the Bankruptcy Act, and to the order of the Honorable A. F. St. Sure, Judge of this Court, filed herein November 8, 1939, hereby objects to the Plan of Reorganization of said Debtor approved by [914] the Interstate Commerce Commission on October 10, 1938 by its order bearing said date, as modified by the Report and Order of said Commission dated June 21, 1939, and thereafter certified to this Court pursuant to the provisions of said Subsection (e) of said Section 77 on the grounds that said Plan of Reorganization is unfair and inequitable, does not afford due recognition to the rights of each class of creditors and stockholders of the Debtor, discriminates unfairly in favor of certain classes of creditors and stockholders, and does not conform to the requirements of the law of the land regarding the participation therein of the various classes of creditors and stockholders of the Debtor, and for a more detailed and specific

statement of said Objections and of the claims of the Debtor for equitable treatment of its creditors and stockholders, the Debtor further states and shows to the Court as follows:

(a) The modified Plan of the Interstate Commerce Commission without warrant of law and without lawful evidence attempts to limit the capitalization of the reorganized Company (taking no par value stock at \$100 per share) to \$97,763,522, which is lower than (1) the cost of the Debtor's railroad property devoted to public use adequately depreciated, or (2) the value of its property as reported by the Interstate Commerce Commission pursuant to Section 15(a) of the Interstate Commerce Act together with capital expenditures between the valuation date and January 1, 1939, or (3) the value of the Debtor's property entitled to the protection of the Fifth Amendment to the Constitution of the United States. [915]

(b) The modified Plan of the Interstate Commerce Commission, without warrant of law and without lawful evidence attempts to exclude from any participation therein or in the distribution of securities of the reorganized Company thereunder and to treat as without value and extinguish or expropriate \$7,809,639. of unsecured indebtedness, and \$28,300,000 par value of Preferred Stock, and \$47,500,000 par value of Common Stock of the Debtor, although after making whole all claims entitled to priority there is a residuum of property value or equity applicable thereto of not less than

\$22,215,138 on any of the three bases specified in the preceding paragraph (a).

(c) The modified Plan of the Interstate Commerce Commission disregards Subsection (1) of said Section 77 which provides that the rights and liabilities of creditors and of all persons with respect to the Debtor and its property shall be the same as if a voluntary petition for adjudication had been filed and a decree of adjudication had been entered on the day the Debtor's petition was filed, which day was August 2, 1935, and without warrant of law and without lawful evidence provides for the issue to holders of First Mortgage Bonds of the Debtor and to secured creditors of the Debtor of shares of Common Stock of the reorganized Company in respect of many millions of dollars of interest accrued but unearned after said date thereby reducing the shares of such Common Stock fairly and equitably available for distribution to the Debtor's other creditors and stockholders.

(d) The modified Plan of the Interstate Commerce Commission attempts unlawfully to abridge or impair the [916] right of the reorganized Company to manage its own affairs by providing for a mandatory Capital Fund of \$500,000 in each year regardless of the necessities of the property.

(e) The modified Plan of the Interstate Commerce Commission is an impracticable Plan unacceptable to the requisite percentages of creditors and stockholders of the Debtor entitled to participate therein and unless modified so as to afford fair

and equitable treatment to all classes of creditors and stockholders of the Debtor will precipitate litigation of many serious issues of law and fact such as the true valuation of the Debtor's property involving a judicial review and revision of the principles of valuation stated by the Interstate Commerce Commission in *Texas Midland Railroad*, 77 I. C. C. 1, and subsequent cases; the conflicting lien claims of the Trustees of the Debtor's First Mortgage and General and Refunding Mortgage in respect of the Northern California Extension representing an investment in excess of \$10,000,000; the operation and incidence of the after-acquired property clauses of the Debtor's First Mortgage and General and Refunding Mortgage in respect of equipment representing an investment of many millions of dollars made subsequent to the execution and delivery of the First Mortgage; and other issues which the Supreme Court of the United States in its opinion in the case of *Thomas K. Case, and others v. Los Angeles Lumber Products Company, Ltd.*, decided November 6, 1939, states are proper subjects of adjustment and compromise in proceedings under the Federal Bankruptcy Act.

As the concrete claim of the Debtor for fair and equitable treatment of its creditors and stockholders and [917] as a sound basis for the adjustment and compromise of serious issues of law and fact and the avoidance of wasteful litigation, the Debtor respectfully asks that this Court approve and recommit to the Interstate Commerce Commission,

together with a transcript of additional evidence in support thereof, the Plan of Reorganization annexed as Exhibit A to its Petition filed with the Interstate Commerce Commission on August 2, 1939.

Subject to possible modifications in detail which might readily be worked out in a pretrial conference under Rule 16 of the Rules of Civil Procedure, this Plan of Reorganization, which represents the result of conferences between substantial creditor and stockholding interests extending over a period of many weeks immediately prior to the release of the Interstate Commerce Commission's modified Plan, is one that should prove acceptable to the requisite percentages of the Debtor's creditors and stockholders and if supported by additional evidence deemed essential by the Interstate Commerce Commission should also prove acceptable to the Interstate Commerce Commission.

To the end that this Court may receive evidence to supply or correct any factual deficiencies in the record as certified by the Interstate Commerce Commission, attention is respectfully directed to the conclusions of said Commission in its Report and Order dated September 19, 1939, denying the Petition of the Debtor for the substitution of the above-mentioned Plan, Exhibit A, for the Commission's modified Plan. The Commission says:

(First Conclusion)

"We are not satisfied that the mandatory [918] feature of the capital fund should be

reduced from \$500,000 to \$300,000. In both of our prior reports we found in effect that yearly contributions of \$500,000 to the capital fund were essential to meet the debtor's requirements. In our report of June 21, 1939, we considered requests that the yearly contributions to the capital fund be reduced to \$300,000. The debtor's petition does not offer to prove or set forth facts even tending to show that we were in error in our finding that the capital fund should be mandatory at \$500,000."

At the hearing on these Objections the Debtor will be prepared to present evidence showing that the Capital Fund should be wholly discretionary and that a mandatory Capital Fund of \$500,000 is in excess of the probable requirements of a property recently rehabilitated at a cost in excess of \$10,000,000.

The Commission further says:

(Second Conclusion)

"The allocation of 8.54 percent of the new common stock to the Western Pacific Railroad Corporation, in its capacity as a general creditor, and 23.59 percent to it in its capacity as a stockholder, and 0.07 percent to the Western Realty Company as a general creditor would require a reversal of our findings that those interests have no value, or a finding that the concessions required of the senior interests are justified and are compensated by concessions to

be made by the junior interests. This proposed sharing of common stock affects also our previous finding as to what constitutes fair and equitable treatment of part of the interests of the first-mortgage bondholders. The debtor's petition does not set forth or offer to prove facts indicating that our findings with respect to these matters were erroneous or furnish any other basis for a finding that the proposed new plan would be fair and equitable."

The Debtor maintains that the Interstate Commerce Commission has made no such finding of value as the amended Bankruptcy Act contemplates as the basis for excluding the Debtor's unsecured creditors and stockholders from [919] participating in the Plan of Reorganization certified to the Court and that no value of the Debtor's property has been certified to this Court under Subsection (e) of Section 77 of the Bankruptcy Act, and that the record contains no evidence or factual data to support such a finding, but even if such a finding had been made it is ineffectual for any purpose under said Subsection (e) unless and until affirmed by this Court. But said Commission here recognizes that such a finding is inappropriate if under an agreed-upon Plan of Reorganization in which doubtful issues of fact and law are adjusted and compromised, "the concessions required of the senior interests are justified and are compensated by concessions to be made by the junior interests".

At the hearing upon these Objections, the Debtor will be prepared to present evidence to show that 32.20% of the Common Stock proposed to be issued to the junior interests under the substitute Plan of Reorganization annexed as Exhibit A to its Petition filed August 2, 1939, is valued by the Interstate Commerce Commission under the modified Plan at \$5,863,020, and that by conceding this amount in Common Stock of the reorganized Company to the junior interests, the senior interests will receive under the adjustment or compromise the following considerations, among others:

(1) Recognition of approximately \$10,000,000 of interest accrued but unearned subsequent to August 2, 1935, and of doubtful validity as a provable claim under Subsection (1) of said Section 77.

(2) Relinquishment of the substantial claim of the General and Refunding Mortgage to an undivided half [920] interest in the Northern California Extension representing an investment of more than \$10,000,000.

(3) Relinquishment of the substantial claims of the General and Refunding Mortgage to a first lien on the equity in equipment valued at \$6,179,121.48, and on \$892,700.98 of free cash on hand on August 2, 1935, and other claims of like character.

Not only are these concessions by the junior interests to the senior interests adequate as a consideration for the concession by the senior interests to the junior interests of 32.20% of the Common Stock

of the reorganized Company valued by the Interstate Commerce Commission at \$5,863,020, but the compromise and adjustment is one that this Court after hearing may find to be extremely favorable to the senior interests.

The Commission further says:

(Third Conclusion)

"In our report of October 10, 1938, we found that the total annual fixed and contingent interest charges of the reorganized company, plus requirements for the capital and sinking funds should not exceed \$2,000,000 per annum. In our report of June 21, 1939, we modified that finding to the extent of approving a plan by which those annual charges would slightly exceed \$2,000,000, viz., \$2,055,155. Under the new plan those charges would be \$2,300,530. There has been no showing or offer of proof of new facts or changed conditions that would warrant our modifying our basic finding to that extent.

We are not persuaded that there is justification for changing the relationship of fixed debt to total capitalization from that of the approved plan to that resulting from the capitalization under the new plan."

Whether the claims of the senior creditors should be settled by the allocation of income bonds and preferred [921] stock on the basis of 40% in income bonds and 60% in preferred stock or should

be settled through the issue of 50% of income bonds and 50% of preferred stock is a minor issue readily adjustable in conference. The Debtor objects to the allocation on the basis of 40% in income bonds and 60% in preferred stock on the ground that this adjustment is unfair and inequitable to the senior creditors and at the hearing will ask permission of the Court to offer additional evidence with respect to the earning power of the Debtor's property. Estimates of prospective earnings were offered by the Debtor solely on the issue of a conservative fixed interest charge. No estimates were offered as a basis for limiting capitalization or fixing the proportion of capitalization to be represented by Income Bonds. The Debtor contends that these subjects are not within the Commission's jurisdiction under Section 77 of the Bankruptcy Act.

In its fourth and final conclusion the Commission states:

"Nor do the responses we have received warrant our regarding the new plan as one agreed to by the parties."

The Debtor recognizes that the agreement of the parties of record to accept the substitute Plan was inchoate at the time the Interstate Commerce Commission released its own modified Plan and that the Insurance Group Committee representing substantial holdings of First Mortgage Bonds of the Debtor failed to support the Debtor's petition filed August

2, 1939, asking that the said Commission approve and certify the substitute Plan to this Court in lieu of its own modified Plan. A pretrial under Rule 16 of the Rules of Civil Procedure offers this Committee a locus [922] penitentiae as well as an opportunity to propose constructive amendments designed to bring all parties together in support of a Plan of Reorganization that will be fair and equitable to all creditors and stockholders, will be in the public interest, and will avert costly and destructive litigation.

(f) The modified Plan of the Interstate Commerce Commission is predicated upon an erroneous determination of judicial questions specified in the preceding paragraph (e) all of which the Debtor asks be reviewed and determined by this Court in the exercise of its judicial authority under said Section 77 unless settled under sanction of this Court as "a normal part of the process of reorganization".

Dated, December 8, 1939.

PIERCE & GREER,

40 Wall Street,

New York, N. Y.,

C. W. DOOLING,

878 Mills Building,

San Francisco, California,

Attorneys and Counsel for Debtor.

[Endorsed]: Filed Dec. 8, 1939. [923]

[Title of District Court and Cause.]

**OBJECTIONS OF IRVING TRUST COMPANY,
AS SUBSTITUTED TRUSTEE UNDER
GENERAL AND REFUNDING MORT-
GAGE, TO PLAN OF REORGANIZATION
APPROVED BY INTERSTATE COM-
MERCE COMMISSION ON JUNE 21, 1939.**
[924]

Irving Trust Company is the Substituted Trustee under the General and Refunding Mortgage of The Western Pacific Railroad Company dated as of January 1, 1932, whereunder there are now issued and outstanding \$18,999,500 principal amount of bonds. Pursuant to the provisions of the order of this Court dated November 8, 1939, it hereby objects, on behalf of the holders of bonds issued under said Mortgage, and on its own behalf, to the Plan of Reorganization approved by the Interstate Commerce Commission in its report and order in Finance Docket No. 10913, decided June 21, 1939, upon the following grounds:

I. On Behalf of the Holders of Said Bonds:

1. Said Plan of Reorganization is not fair and equitable and does not afford due recognition to the rights of the holders of bonds secured under said General and Refunding Mortgage and discriminates unfairly in favor of [925] the holders of bonds secured by the First Mortgage of The Western Pacific Railroad Company dated June 26, 1916.

2. Upon information and belief, said General and Refunding Mortgage bonds are pledged to se-

cure debts aggregating approximately \$10,481,685.60, plus interest; and said General and Refunding Mortgage is a first lien prior to or on a parity with any lien of the First Mortgage upon properties of the Debtor greater in value than the debts secured by said General and Refunding Mortgage bonds; and the holders of General and Refunding Mortgage bonds are entitled to treatment in any reorganization plan on a parity with the treatment accorded to holders of First Mortgage bonds.

3. In its report in this matter dated October 10, 1938, the Interstate Commerce Commission stated as follows:

“* * * While due recognition must be accorded to the rights of the creditors with whom are pledged general-mortgage bonds, those creditors are not entitled to the same treatment as first-mortgage bondholders, who should be considered as having a first lien upon practically all the assets of the debtor. It follows that holders of the debtor's first-mortgage bonds should receive securities of a higher rank than those allotted to other creditors, at least to the extent that existing conditions will permit.”

The Plan proposed by the Commission and annexed to its said report dated October 10, 1938, provided that holders of existing First Mortgage Bonds should receive for each \$1,000 principal amount of such bonds and accrued and unpaid interest thereon,

\$400 of new income mortgage bonds, \$600 of new preferred stock and 3.13 shares of new common stock, and that holders of General Mortgage Bonds should receive only new [926] common stock in satisfaction of their claims.

4. The report of said Commission dated June 21, 1939, modified its report dated October 10, 1938, in certain respects and allocated to the holders of General Mortgage Bonds a total of \$732,010 of new income mortgage bonds and \$1,147,955 of new participating preferred stock, in recognition of the admittedly prior lien of the General and Refunding Mortgage upon \$223,732 of cash in the hands of the Mortgage Trustee and upon a note of Tidewater Southern Railroad Company for \$508,278 and \$1,147,955 par value of capital stock of Tidewater Southern Railroad Company pledged under the General and Refunding Mortgage.

5. The report of said Commission dated June 21, 1939, failed to give any recognition to the lien of the General and Refunding Mortgage, which this Trustee contends is prior to any lien thereon of the First Mortgage aforesaid, upon (a) the debtor's equity in rolling stock subject to lease, conditional sale or equipment trust agreement and having a value of over \$6,000,000 above all amounts due thereon, (b) non-carrier real estate having a valuation of approximately \$3,427,923.80 and (c) branch lines and jointly owned tracks aggregating approximately 23.33 miles in length, the Commission having previously, and erroneously, ruled in its report

dated October 10, 1938 (although recognizing that final adjudication of such questions must be made by the Court) that the properties last mentioned were subject to the lien of the First Mortgage.

[927]

6. The report of said Commission dated June 21, 1939 erroneously held that the prior lien of the General and Refunding Mortgage on stock and bonds of Central California Traction Company, having a book value of \$633,367.10 and stock of Alameda Belt Line, having a book value of \$465,300, had no material value, and refused to give any recognition thereto in determining the allocation of securities.

7. The report of said Commission dated October 10, 1938, was based on the conclusion that the lien of the General and Refunding Mortgage on that portion of the debtor's railway known as the Northern California Extension was subject to the prior lien of the said First Mortgage to the extent of the entire debt secured by the First Mortgage; and said report and Plan, dated June 21, 1939, was likewise based on that conclusion, and gave no recognition, in determining the allocation of securities, to the lien of the General and Refunding Mortgage upon said Northern California Extension. Upon information and belief, said Northern California Extension was constructed during the years 1930, 1931 and 1932 at a total cost of approximately \$10,434,408, of which only \$4,875,000 was supplied from the proceeds of the First Mortgage Bonds; only ap-

proximately one-half of the right of way upon which said Northern California Extension is constructed was acquired with proceeds of First Mortgage Bonds; and the actual value of said Northern California Extension is greatly in excess of the amount of proceeds of First Mortgage bonds used in the construction thereof. Upon information and belief, the First [928] Mortgage is entitled to a lien only upon the portion of said Northern California Extension which was constructed with the proceeds of First Mortgage Bonds, and only for the amount of the proceeds of First Mortgage Bonds which were used in its construction; and the General and Refunding Mortgage, which specifically describes said Northern California Extension as subject to the lien thereof, is entitled to a prior lien upon the portion of said Northern California Extension which was not constructed with the proceeds of First Mortgage Bonds and to a lien upon the balance of said Northern California Extension, subject only to a lien in favor of the First Mortgage Trustees for the amount of the proceeds of First Mortgage Bonds used in the construction thereof.

8. The report and Plan of said Commission dated June 21, 1939 gave no recognition to the fact that cash in the Debtor's possession on the date of institution of the reorganization proceedings amounting to \$848,452.50 and miscellaneous notes, advances and unpledged securities having a book value of approximately \$101,409.35, were not subject to the lien of any mortgage, and that there-

fore the creditors secured by General Mortgage Bonds were entitled to share in the distribution thereof and to receive securities of the same type issued to holders of First Mortgage Bonds on account of their share therein.

9. This Trustee, on behalf of the holders of bonds issued under the General and Refunding Mortgage, as its claim for equitable treatment, asserts that the holders of such bonds are entitled to receive securities of the same classes [929] and in the same proportions as may be awarded under the Plan to the holders of First Mortgage Bonds.

II. On Behalf of the Holders of Said Bonds and on Behalf of the Trustee Individually:

10. The Plan and report of said Commission dated June 21, 1939, provide for the payment of expenses of reorganization allowed by the Court within the maximum fixed by the Commission, and direct that existing mortgages on the debtor's properties be released and cancelled and all funds on deposit with the Trustees under said mortgages and all collateral pledged thereunder be surrendered to the reorganized company free from the liens of said mortgages, after deduction therefrom of any amounts which the Court may find should be deducted under the provisions of said mortgages and consistent with the Plan. The Commission in prior proceedings has held that the amount of compensation and expenses of mortgage trustees (including counsel fees), allowable under Section

77(c)(12) of the Bankruptcy Act, is to be restricted according to the extent to which such services have been of benefit to the Debtor's estate and to the reorganization plan; and the compensation fixed by the Commission for such services and expenses may be less than that to which the mortgage trustee would be entitled pursuant to its contract right under the General and Refunding Mortgage in respect of services and expenses in the administration of the trust under said Mortgage. [930]

11. No express provision is made in the report and plan of the Commission herein for the determination and satisfaction of this Trustee's lien under Article Eleven, Section 1(g), of the General and Refunding Mortgage upon property held under said Mortgage for its compensation and expenses (including counsel fees), in respect of services in the administration of the trust but which may not be covered by compensation within the maximum limits fixed by the Commission under Section 77(c) (12) of the Bankruptcy Act. The said Trustee's lien under the General and Refunding Mortgage is required by Section 77—particularly Section 77(b) (5) and Section 77(f)—to be fully provided for and satisfied by the reorganization plan before any property subject to the lien of said Mortgage may be transferred free and clear of said lien, and before the Trustee may be required to join in a transfer and conveyance of the mortgaged property or to release and cancel said mortgage. There should be contained in the reorganization

plan an express and clear provision for the satisfaction of said lien by the full payment thereof.

12. Said Plan finds that claims against the Debtor entitled to priority over any of its mortgages are not affected thereby, and provides that the Court may cure any defect, supply any omission or reconcile any inconsistency in such manner and to such extent as may be necessary or expedient in order to carry out the Plan effectively. This Trustee is uncertain as to whether said provision of the Plan would permit this Court, as a part of the presently [931] proposed Plan, to provide for the payment and discharge of said Trustee's lien, or whether it would be necessary for the Court to refer the proceeding back to the Commission for further action in respect of said lien. By either the one or the other of such methods, this Court should see that the reorganization plan as finally adopted herein shall provide for the full payment and discharge of said lien; and this Trustee asserts that it would be equitable and proper for the reorganization plan to provide for such payment and discharge without taking away from the creditors secured by the General and Refunding Mortgage bonds any of the new securities which would be distributable to them as such creditors and without deducting the amount of said Trustee's lien from the value of the security for such creditors.

Wherefore the Substituted Trustee respectfully prays: (a) that this Court determine the lien of the General and Refunding Mortgage upon the

Debtor's property, and the Substituted Trustee's claim for equitable treatment; (b) that this Court disapprove the proposed reorganization plan as not fair and equitable to the holders of the debtor's General and Refunding Bonds; (c) that this Court, in order to cure defects, supply omissions or reconcile inconsistencies in the proposed Plan, or in order to have a new and proper plan, determine that the lien of the Substituted Trustee for compensation and expenses (including counsel fees), in so far as the same may not be covered by allow- [932] ances made within the maximum fixed by the Commission under Section 77(c)(12), shall be fully paid in cash from the funds in the hands of the Substituted Trustee; (d) that the Court refer the proceedings back to the Interstate Commerce Commission for further action in accordance with the rights of the creditors secured by the General and Refunding Mortgage bonds as asserted and to be asserted by this Trustee and as this Court shall determine; and (e) for such other and further relief as may be just and proper.

Dated: New York, December 5, 1939.

IRVING TRUST COMPANY,
as Substituted Trustee under
General and Refunding Mortgage of The Western Pacific
Railroad Company dated as of
January 1, 1932,

By **F. G. HERBST,**

Vice-President.

PILLSBURY, MADISON & SUTRO,

Standard Oil Building,
San Francisco, California.

DAVIES, AUERBACH,
CORNELL & HARDY,

One Wall Street,
New York City.

H. C. McCOLLUM,
Of Counsel,

Attorneys for Substituted
Trustee.

[Endorsed]: Filed Dec. 8, 1939. [933]

[Title of District Court and Cause.]

OBJECTIONS TO COMMISSION PLAN OF
REORGANIZATION. STATEMENT OF
CLAIMS FOR EQUITABLE TREATMENT,
AND PETITION FOR AMENDMENT OF
SUCH PLAN TO CORRECT DEFECTS
THEREIN.

To The Honorable A. F. St. Sure, Judge of the
United States District Court for the Northern
District of California, Southern Division:

The Western Realty Company, an unsecured
creditor of the Debtor above named, hereby objects
to the Plan of Reorganization of the Debtor (here-
inafter designated as the "Commission Plan") as
promulgated by the Interstate Commerce Commis-

sion in its order in Finance Docket No. 10913, dated June 21, 1939, and presents its claims for equitable treatment, pursuant to the provisions of the order of this Court, dated November 8, 1939, and to the provisions of Subsection (e) of Section 77, of the Bankruptcy Act, and does hereby represent to the Court and [934] petition as follows:

I. General Objections to Commission Plan:

Subject to the more detailed and specific objections and claims for equitable relief hereinafter set forth, your petitioner objects generally to the Commission Plan of June 21, 1939 on the ground:

(a) That the Commission Plan is grossly unfair and inequitable as to your petitioner, fails to give due recognition to the legal rights and equitable claims of your petitioner and discriminates unfairly against your petitioner.

(b) That although the Commission has adopted the valuation of the property of the Debtor previously found by it under Section 19 (a) of the Interstate Commerce Commission Act, and has recognized in making such valuation the undisputed investment in the property of the Debtor heretofore made, the Commission has nevertheless, in the plan which it has originated and promulgated, and without authority of law, completely disregarded such valuation and such investment, and proposes a capital structure based not upon evidence but upon unsupported theory; that the proposed capital structure promulgated by the Commission, ignoring

true values of railroad property, discriminates unfairly as between various classes of creditors, completely disregards the legal rights and equitable claims of the general creditors of the debtor, including your petitioner.

(c) That the Commission Plan is not in conformity with the law of the land, and is unauthorized by the provisions of Section 77 of the Bankruptcy Act.

(d) That the Commission Plan is grossly unfair to the unsecured creditors of the Debtor, including your petitioner, and to the equitable owners of the property, in that, although the valuation of the property of the Debtor is greatly in excess of its entire indebtedness, the Commission Plan appropriates the [935] entire excess to the overpayment of secured creditors and thereby the Commission Plan appropriates the property of your petitioner and others without due process of law and in violation of the law of the land.

To all of which your petitioner objects and presents its claims for equitable treatment, all as is set forth in detail and specifically below.

II. Petitioner's Claim:

Your petitioner is an unsecured creditor of the Debtor in the principal amount of \$50,000 together with unpaid and accrued interest thereon at the rate of five (5) per cent per annum from July 18, 1930, which unpaid interest to January 1, 1939, (the effective date of the Commission Plan)

amounted to \$11,666.68, or an aggregate debt on January 1, 1939, of \$61,666.68.

The said indebtedness owned by the Debtor to your petitioner arises from an advance made on open account by your petitioner to the Debtor as follows:

On July 18, 1930, at the request of the Debtor, The Western Pacific Railroad Company, your petitioner advanced to the Debtor the sum of \$100,000 in cash, to be repaid with interest thereon at the rate of five (5) per cent per annum; of this sum, the Debtor on July 1, 1931 repaid \$50,000, leaving a balance due of \$50,000; no part of said balance of \$50,000 has been paid, and no interest on said indebtedness incurred July 18, 1930, has been paid, except interest to April, 1934.

A proof of claim was duly filed by your petitioner in the above entitled proceedings for reorganization of the Debtor.

By an order entered August 20, 1935, this Court classified the above described claim of your petitioner as a separate and distinct class for the purposes of Section 77 of the Bankruptcy Act as amended. [936]

III. Treatment Accorded Petitioner's Claim Under the Commission Plan:

The Commission finds that your petitioner's claim, and other unsecured claims not entitled to priority over existing mortgages are without value and that no securities or cash should be distributed

under the plan in respect to such claims. (Report of October 10, 1938 (230 I. C. C. 61, 100-101); Order of June 21, 1939, page 27.)

IV. Property of the Debtor and Rights Thereto and Therein:

Your petitioner is an unsecured junior creditor. Its claim against the debtor corporation is relatively a small one, though the recognition and fair treatment of said claim is no less important on that account to your petitioner.

It is the established law of the land, which your petitioner recognizes, that in proceedings under Section 77 of the Bankruptcy Act, the value of the property of the Debtor is available, first to satisfy the claims of secured creditors, according to their prior rights; second, to meet and satisfy the claims of unsecured, general creditors, and third to protect and preserve the interests and investment of the equity owners, if and to the extent that this may be possible.

Northern Pacific Rwy. Co. v. Boyd, 228. U. S. 482

Louisville Trust Co. v. Louisville Rwy. Co., 174 U. S. 674

Kansas City Terminal Ry. v. Central Union Trust Co., 271 U. S. 445

But it is equally, and without dispute, the law of the land that the entire property of the Debtor, at its fair and reasonable value, constitutes for the purposes of such proceedings a fund for the recognition and fair treatment of ALL creditors, of what-

ever class, and the stockholders, subject only to prior rights as among the interests represented. In the Boyd case, the Court held that no plan can be fair and equitable which endeavors to satisfy the interests of bondholders and [937] stockholders and squeezes out the legitimate claims of general creditors. And, where the Debtor is hopelessly insolvent, both in the equity sense and in the bankruptcy sense, and a plan of reorganization is proposed which undertakes to recognize the rights of stockholders at the expense of failure to meet fully the prior claims of bondholders, the Court will not approve such plan.

Case *v. Los Angeles Lumber Products Co. Ltd.*, U. S. (decided Nov. 6, 1939)

But where in fact the valuation of the property, as in the instant case, exceeds by more than thirty per cent the aggregate of all creditors' claims, secured and unsecured, your petitioner respectfully insists that no plan which wholly ignores such excess, and which would distribute the entire property to prior secured creditors, can be, in fact or in law, "fair and equitable."

There is nothing clearer in our law than that, in any reorganization proceeding, wherein there is to be determined the capitalization of the reorganized company and the securities to be given to each class of creditors, each creditor is entitled to insist that the values employed for that purpose be fair and not forced sale values.

In the recently decided case of *Case v. Los Angeles Lumber Products Co. Ltd.*—U. S.—Nov. 6, 1939, a brief was filed by the United States, in the preparation of which the Solicitor General, Special Assistants of the Attorney-General, the Chief Counsel for the Interstate Commerce Commission and the Counsel and Attorneys for the Securities Exchange Commission participated. In that brief occurs the following significant passage, bearing on the proper interpretation of Sections 77 and 77 B:

“In cases of liquidation no one questions the right of senior security holders to full payment before any distribution of assets to junior interests. [938] Reorganization is an alternative for liquidation in the event of financial failure. *It seeks to substitute going concern values for the forced sales values of liquidation with the object of yielding greater ultimate returns to the senior interests, and allowing wider participation if the circumstances permit.*” (Italics ours)

See also

In re Dutch Woodcraft Shops—14 Fed. Supp. 467

First Nat. Bank v. Flershem—290 U. S. 504

Unsecured creditors of insolvent corporations are entitled to the benefit of the values which remain after lien-holders are satisfied, whether this is pres-

ent or prospective, for dividends or only for purposes of control.

Kansas City Terminal Rwy. v. Central Union Trust Co., 271 U. S. 445

So, in a case where the total value of the assets exceeded the bonded indebtedness of the debtor company, it was recently held by the Circuit Court of Appeals, Ninth Circuit, under Section 77B, that preferred stockholders were entitled to be included in the plan; that it was not unfair by reason of the fact that bondholders were to receive in new bonds one-half of the present amount of the face value of the bonds theretofore held by them, and the remaining one-half in new preferred stock; nor was the plan to be deemed unfair because the stockholders were permitted under it to continue the operation of the debtor's business. The bondholder, the Court holds, is entitled only to payment of the debt due him, principal and interest, and is not ordinarily entitled to take over the management of the business.

DuBois v. Consolidated Rock Products Co.—
C. C. A., 9th Circuit, Nov. 4, 1939, CCH
Bankruptcy Law Service, page 51671, par.
52118.

V. The Value of Debtor's Property:

We come then to the question, what is the value of the Debtor's property.

The valuation of the property of The Western Pacific [939] Railroad Company, made by the In-

terstate Commerce Commission under Section 19A amounted, with additions at cost to December 31, 1935, to \$139,600,455 (Report of Commission, Oct. 10, 1938, p. 24-25, in these proceedings). With further additions and improvements, under the rehabilitation plan now being concluded, such valuation with additions at cost up to the present time would be considerably increased. Your petitioner respectfully directs the attention of the Court to the fact that the Commission in its Report and Order of October 10, 1938, and again in its Report and Order of June 21, 1939, refers to and apparently adopts and reaffirms its Section 19A valuation of the Debtor's property. The Commission does not, in either Report, make any other or different or new "appraisal" of the assets of the Debtor company. There is nothing in the record before the Commission which supports any other or different appraisal of the value of the assets of the Debtor.

The investment in the property of the debtor would, after the deduction of all accrued depreciation, amount to at least \$120,000,000. (Record, Ex. 29, Statement 16, page 2, Dissenting Opinion of Commissioner Miller, pages 72-73, Report of October 10, 1938.)

Again this value of the Debtor's property, the total indebtedness due from the Debtor to all its creditors of every class, including the outstanding equipment trusts and leases, the Trustees Certificates, First Mortgage Bonds, and the claims of se-

cured creditors, with interest to January 1, 1939, in all such cases, amounts to \$87,880,660.

On the basis of the only appraisal and valuation of the Debtor's property in the record before this Court, it would therefore seem perfectly clear that the assets of The Western Pacific Railroad Company exceed by more than \$30,000,000 the aggregate of the claims of all lienholders. Your petitioner [940] asserts that by reason of this condition, not only the general creditors of the corporation but its stockholders as well have a real and substantial interest in the property of the Debtor.

It is true that, because of the recent and temporary inability of the Debtor, in common with a substantial number of the other railroads of the United States, to pay its fixed charges during a period of unparalleled depression, foreclosure of the liens of the First Mortgage and General and Refunding Mortgage would, perhaps, terminate the interest of general creditors and stockholders. Even in such an event, the Court will, because of the very nature of the property and the interests involved, give every consideration to the protection and preservation of the interests of minor and unsecured creditors and the equitable owners of the property. A railroad is not simply private property, but an instrument of public service. Railroad mortgages and trust deeds are ordinarily so large in amount that, on foreclosure, only the mortgagees and their representatives can be considered as possible purchasers. The character of a railroad's business,

and the public obligations which it assumes—obligations from which, unlike other private corporations, it can obtain no relief, or in the carrying out of which it cannot, like others, effect economies by curtailment of personnel or service, in times of business depression—these are factors which both require and justify a court of equity to look beyond the mere technical rights created by contract and recorded obligations, to give due weight to equitable and public considerations and to conserve, wherever possible, the interests of all parties who have any rights in the property, whether as mortgagee, creditor or mortgagor.

Louisville Trust Co. v. Louisville etc. Rwy.
Co., 174 U. S. 674 [941]

Your petitioner contends that this represents the purpose and the meaning of Section 77 of the Bankruptcy Act, and that in the formulation of an equitable plan for reorganization under said Section, the interests of general creditors and stockholders should never be terminated or sacrificed unnecessarily. The intentment of the Act and the public interest in the healthy maintenance of its railroads alike require that every reasonable consideration be given to the preservation of such rights. And where, as here, the appraised investment value of the assets of the Debtor, fully depreciated, still exceeds by more than \$30,000,000—i. e., by more than thirty per cent—the entire debt due lienholders of the Debtor, the interest of the general creditors, to

say nothing of the stockholders; is so substantial that your petitioner believes that no plan of reorganization can be held to be fair or equitable which takes no cognizance of such interests. The valuation made by the Commission, and referred to and apparently adopted by it in its Order of June 21, 1939, fairly represents and sets forth the present fair value of the Debtor's assets. Hence the interest of your petitioner, of The Western Pacific Railroad Corporation as the other unsecured creditor; and of the stockholders, involves \$30,000,000 of the property of a railroad which is today better equipped and in better operating condition than ever before in its history.

It is significant that three plans of reorganization were submitted to the Commission, one by the Debtor itself, one by a committee representing certain institutional bondholders, and one by A. C. James Co., a secured creditor. In its proposed plan of reorganization the Debtor fixed the value of its properties as of January 1, 1936, on the Interstate Commerce Commission basis, at \$143,500,000, and suggested a plan of reorganization involving \$78,226,003 in bonds, and 300,000 shares of [942] common stock of no-par value, and recognizing and providing for every claim, secured or unsecured, and every stockholder.

The bondholders proposed a plan of reorganization which would have authorized a total of undisturbed equipment trust, etc., obligations, bonds and preferred stock amounting to \$121,764,230 together

with 500,000 shares of common stock, without par value. This plan required immediate issuance of such obligations, bonds and preferred stock aggregating \$69,553,050 and of not less than 339,995 shares of stock without par value. And the bondholders' plan provided for the issuance of securities escrow certificates or rights to all creditors of every class, and to the present stockholders of the Debtor.

A. C. James Co. proposed a total capitalization of \$125,096,203, involving \$77,596,203 in undisturbed obligations, bonds and preferred stock and \$47,500,000 in common stock.

It is not without significance as to the true present value of the property of this railroad that (1) the company itself, (2) a group of bondholders involving institutions specializing in industrial investments, and (3) the largest individual creditor of the Debtor unite in proposing capital structures which, however they differed in details, agreed upon a present value of the property in excess of \$120,000,000 and upon the possibility and equitable desirability of preserving the interests of lienholders, general creditors and the Debtor.

It was, perhaps, with these considerations in mind that Commissioner Miller, in dissenting from the plan proposed by the Commission in its Report of October 10, 1938, said: "I am strongly of the view that the capitalization should be generally on the basis of original cost less depreciation amounting to over \$120,000,000, which is about the same

as is proposed in two of the three plans referred to * * *. The no-par-value common stock may have little or no market value when the [943] company is reorganized, but the issuance of in the neighborhood of \$30,000,000 more than the majority would authorize would give the present stockholders a chance to participate in the future profits of the reorganized company."

VI. The Commission Plan, and Theory:

The Commission now proposes, and has certified to the Court a plan of reorganization of the Debtor company (Report of June 21, 1939, P. 13, Order P. 2, 3). The following table shows the capital structure proposed by the Commission's Report of October 10, 1938, (230 I. C. C. 61, 96), and the capital structure now proposed by the Commission:

	Oct. 10, 1938	June 21, 1939
Equipment obligations	\$ 3,066,117	\$ 2,750,000
1st Mtge. Bonds (4%)	10,000,000	10,000,000
Income Bonds	19,716,040 (4%)	21,219,075 (4½%)
Preferred Stock (5%)	29,574,060	31,850,297
Common Stock (No-par)	31,370,300 (a)	31,944,100 (b)

(a) 313,703 shares at \$100 each

(b) 319,441 shares at \$100 each

The proposed effective date of the initial plan of the October 10, 1938 report was fixed as of July 1, 1938. The effective date of the modified plan set forth in the Report of June 21, 1939 is fixed as January 1, 1939.

The attention of the Court is respectfully invited, first, to the differences apparent in these

two plans promulgated within eight months of each other. The 1939 plan involves a proposed total capitalization of the reorganized company \$4,036,955 higher than could be sanctioned by the Commission just eight months before. It proposes to permit a total of undisturbed obligations, bonds and preferred stock \$3,463,155 higher than the maximum which in October 1938 the Commission would approve. It permits the issuance of 5,738 additional [944] shares of common stock of no-par value, but which the Commission for the purposes of financing assumes to have a value of \$100 each, thereby increasing the value of the total authorized common stock to the extent of \$573,800. It proposes not only to increase by \$1,503,035 the aggregate of the Income Bonds to be authorized to pay claims of present secured creditors, but it goes further and proposes an increase from 4% to 4½% in the interest rate to be paid thereon. It increases the interest payable annually to the holders of these Income Bonds from \$788,641.60 to \$954,858.38, and thereby adds to the charges to be paid out of earnings, before dividends can be paid, the sum of \$166,216.78 over the maximum which in October 1938 the Commission thought wise.

These differences are respectfully urged upon the attention of the Court for the reason that they demonstrate clearly the fundamental fallacy of the basic, underlying theory upon which the Commission has promulgated its plan, a theory which your petitioner contends is without support in the law

of the land, unauthorized by the provisions of Section 77 of the Bankruptcy Act, and which would, if it were adopted as a standard for reorganization of the railroads of the country, result in wholesale destruction of investment values and drive investors out of the market for railroad securities.

This basic and confiscatory theory is simply that the Commission will not approve a capital structure in a plan of reorganization unless a material and immediate return on the common stock of the proposed reorganized company is to be expected. Upon this novel and startling "earnings theory" of capitalization the Commission Plan proceeds to appropriate \$120,000,000 in sound values to the payment of secured liens amounting only to \$87,888,660. The Report of the Commission (Oct. 10, 1938, page 40) states that Section 77 of the Bankruptcy [945] Act provides that the approved plan should be "compatible with the public interest." It states that "the public interest is not defined" in the Act, but it assumes that "the capitalization should not exceed a conservative appraisal of the assets to be taken over by the reorganized company, and that proposed charges, whether fixed or contingent, be within its probable earning power." The Commission then argues (page 41) that the capital structure of the reorganized company must be "realistically related" to its actual earning power, and concludes that consideration is to be given to the investment in the property "only to the extent that such investment is justified by probable earn-

ings reasonably foreseeable for the future." Conceding that "it is true that considered alone, the data pertaining to the rate-making value of the Debtor's property, and its investment, would support capitalizations approximating those proposed plans," (i. e. \$125,000,000 to \$150,000,000), the Commission nevertheless thinks "those factors cannot be of controlling importance" and holds that "the capitalization of the reorganized company must be maintained within strict limits if any material return on its capital stock is to be expected and the shares of stock are not to become mere tokens of stock market speculation." Making no reappraisal of the Debtor's property, and ignoring the valuation which the Commission itself has placed upon it (fixed as of Dec. 31, 1935 by the Commission Report of October 10, 1938, page 25) at \$139,600,455, the Commission sets up a plan which deprives the general creditors and stockholders of this company of any interest or participation therein.

The basis for its conclusions lies, apparently, wholly in the statement of the earnings of the Debtor during the period 1926-1936, which, it states, provided consolidated net income for the payment of interest on funded debt as follows: (Report Oct. 10, 1938, p. 20). [946]

Year		Operating ratio Percentage
1926	\$4,759,282	70.3
1927	2,674,494	79.2
1928	2,964,371	80.3
1929	2,529,846	83.2
1930	1,552,487	84.0
1931	186,708 (deficit)	91.0
1932	252,706	85.8
1933	674,607	83.0
1934	1,084,244	81.1
1935	805,589	83.7

But the background of these figures is of greater importance than the figures themselves. During that period this railroad in common with every other road, and every other corporation in the United States was confronted with the greatest business depression in the history of America. Dividends were discontinued and an improvement and rehabilitation program was undertaken. From 1927 to date a total of \$16,600,000 was expended in the revision, renewal and rehabilitation of its properties and equipment, approximately half of which the Commission required to be charged as operating expenses. Of this \$8,782,000 has been expended under the supervision of this Court since 1936, so recently that as yet the benefits of inevitable increased earnings are not fully realized. In 1931 and 1932 the company completed at a cost of approximately \$10,000,000 its Northern California Extension, connecting with the Great Northern Railway and enormously increasing the ultimate, prospective income and net earnings of the Company. A very large portion of the present indebtedness of the company

results from these long-time, statesmanlike improvements and additions which must ultimately be reflected in enhanced business and earnings.

[947]

To assume that, in the depths of the greatest depression, any railroad should necessarily earn immediate net profit sufficient to carry fixed charges on these improvements is almost an absurdity. To argue that by reason of the Debtor's temporary inability to do so, the value of such additions to its assets must be written off as worthless and that future reasonable earnings cannot be expected to justify them is to fly in the face of the facts of our economic history. The facts are all in the record. The management of the Debtor, upon the basis of its performance, is entitled, you petitioner believes, to the confidence of the Court and the creditors whose interests are here involved. The earnings of the road are steadily increasing, under excellent management. In the first nine months of 1939 Total Railway Operating Revenue increased \$1,728,278.89 as compared to the same months of 1938. Operating Expenses were reduced \$745,252.62, resulting in a net gain in Revenue from Railway Operation of \$2,473,531.51 in one year. Its properties are in better condition than ever before in its history. The country is steadily climbing out of the depression. The gross and net earnings, not of the Debtor alone, but of every major railroad in the country are increasing.

Yet in the face of these favorable conditions and increasing earnings, the Commission Plan

says, in effect, to the general creditors: "We were able in October 1938 to authorize the issuance of enough securities in the reorganized company to amount to more, taking the no-par value stock at \$100, than the total claims of all the creditors, but we gave it all to the secured creditors. We more than paid their claims. We are now, in June 1939, more optimistic about the value of this property and its probable earnings. We are now able to make the authorized capitalization of the company \$4,000,000 more than we thought we could last October. We can add nearly \$3,500,000 to [948] undisturbed obligations, bonds and preferred stock. We can even increase the rate of interest to be paid on them \$166,000 a year, to make them more valuable. And finally we are now sufficiently sure that the new shares of stock will not become "mere tokens of stock market speculation" that we can even grant an increase of nearly \$600,000 worth of these shares. But we still cannot give you any interest in this company in payment of the money you advanced to aid in creating these values. We must give it all, regardless of \$30,000,000 excess of value over secured debts, to the secured creditors. We want not only to pay them full, but to pay some of them more than the total principal and interest owned. (Report June 21, 1939, pages 13, 14). We therefore hold your claims without value."

VII. Section 77 and the Commission Theory:

Your petitioner contends that the limitation upon capitalization which is embodied in the plan now before the Court is not authorized and can-

not be justified by and specific limitation within the four corners of Section 77. The only limitation definitely indicated by the Act is to be found in Subsection (b) (4), which refers only to securities to be issued which set up fixed charges, "that, after due consideration of the probable prospective earnings of the property in the light of its earnings experience and all other relevant facts, there shall be adequate coverage of *such fixed charges* by the probable earnings available for the payment thereof." And in Subsection (e) the Act further requires that a plan of reorganization be approved only if, besides complying with the provisions of Subsection (b), "it is fair and equitable, affords due recognition to the rights of each class of creditors and stockholders, does not discriminate unfairly in favor of any class of creditors or stockholders, and will conform to the requirements of the law of the land regarding the participation of the various classes [949] of creditors and stockholders."

It is contended by your petitioner that the provisions of Section 77 contemplate and require (1) that the capitalization of the reorganized company is to be determined only upon the basis of the appraised value of the property involved; (2) that "earnings" are not the only measure to be used for the purpose of determining the aggregate of new securities to be authorized; (3) that nothing in the Act authorizes or requires any restriction upon capitalization to insure common stock dividends; (4) that under the law of the land, wherever the property of the debtor exceeds in appraised value

the sum total of all the claims against it, no plan can be fair and equitable, which accounts the claims of unsecured creditors and the interest of stockholders as worthless.

“A proceeding under #77 is not an ordinary proceeding in bankruptcy. It is a special proceeding which seeks only to bring about a reorganization, if a satisfactory plan to that end can be devised. And to prevent the attainment of that object is to defeat the very accomplishment of which was the sole aim of the Section, and thereby render its provisions futile.”

Continental Illinois National Bank & Trust
Co. v. Chicago, Rock Island & Pacific Rwy.
294 U. S. 648, 676

The unsoundness and unfairness of the “earnings theory” upon which the limitation of capitalization is fixed in the Commission Plan is nowhere better demonstrated than in a comparison of the Plan outlined and approved October 10, 1938, and the Plan approved June 21, 1939. If the Commission was right in Plan of 1938, no increase in capitalization could be sanctioned in 1939 except because increased earnings subsequent to October 1938 showed that the railroad could earn and pay interest and dividends on a larger capital structure. If the Commission is now right in adding \$4,000,000 to the proposed capital structure, in June 1939, then quite obviously its “guess” as to the capitalization which prospective earnings would reasonably support, made in October 1938, was wrong.

On June 21, 1939, the date of the present Order of the Commission, the Chairman of the Commission, Mr. Eastman, appeared before the Special Subcommittee on Bank and Bankruptcy of the Committee on the Judiciary of the House of Representatives. He there made the following wise and pertinent statement:

"Any estimate of the future earnings of a railroad can at best be no more than an 'educated guess,' but there has never been a time in the history of the country when it has been more difficult to make such a guess than now. Anything remotely approaching accuracy is impossible. . . . To deprive thousands of investors who in the past have put their savings into railroad securities of all hope of recoupment is a very serious step, for if our capitalistic society is to succeed, it demands as scrupulously fair treatment of investors as of labor."

Your petitioner contends that Section 77 nowhere implies or authorizes the setting up of a capital structure on this basis.

VIII. The True Basis of Value:

The primary measure contemplated by Section 77 for determining the limits of the capital structure of a company reorganized under that Section, and for the allocation and distribution to the creditors and stockholders of the debtor company, is simply the fair, reasonable depreciated value of the investment in the property which it employs in

rendering its services to the public and the nation. This property, so appraised and valued, constitutes a trust fund for the benefit and security of lienholders, creditors and shareholders, alike, available subject to prior rights which the law recognizes and will enforce, for satisfying in an equitable manner the claims and interests of these parties. The law sanctions no drastic and arbitrary reduction or limitation of such a capital structure based entirely upon estimates of earnings derived not from the entire history of 22 years of operation, but drawn solely from the reduced earnings of a world wide depression period from which it is already emerging. [951]

Property rights do not disappear simply because no high return can be realized at present or guaranteed for the immediate future. And immediate and present payment of interest, dividends, or income is by no means the only, or even the most important index of value. Fortunes have been made, in every important city in America, by the purchase of unimproved land, upon which for many years the owners paid taxes, without immediate income of any sort. Banks and shrewd private investors purchase short term government obligations with an exceedingly low interest rate, mere fractions of one per cent, at times. The proceeds of an insurance policy, left with the company, to bear a low rate of interest and payable for the life of the beneficiary may be of far more certain value than

the same money invested in an industrial enterprise paying three to four times as high an interest return. It is a matter of common knowledge that in the City of San Francisco within recent years, every one of the principal hotels was vacant and unused for a period of months, by reason of a temporary crisis caused by a strike of hotel employees. The value of the properties involved was not thereby wiped out in toto. As of the time of the filing of these objections, the municipal wharves and terminal facilities, as well as private terminals on both sides of San Francisco Bay have been idle for similar reasons. This does not necessarily mean a complete destruction of the value of the property. Temporary business crises affect the immediate earning power of invested capital, but investment values are to be determined, soundly, by reference only to long-term earnings under normal conditions.

The true value of a railroad in so far as it is affected by its earnings, is determined by what it has earned and can earn under reasonably normal conditions. What a railroad can earn in the future cannot, for this purpose, be determined by its earnings during an unprecedented depression and in the [952] abnormal circumstances resulting from the pendency of Section 77 proceedings.

IX. The Commission Plan and the Public Interest:

In the promulgation of its plan, the Commission refers to the phrase in Section 77; Subdivision

(d) which provides that the plan approved by the Commission shall be one that will, in *its opinion*, be "compatible with the public interest." This phrase is not repeated in Subdivision (e), but it appears perfectly obvious from the provisions of the latter section that if, upon hearing and consideration of objections to a proposed plan, the Court finds such plan wanting in respect to the standards set forth in Subdivision (e), modifications of the proposed plan may be made, and the plan *as modified* may still be entirely "compatible with the public interest."

And your petitioner insists, with all deference to the Commission, that a plan which wipes out 25% of the true value of the Debtor's property by a drastic and unnecessary forced reduction of capitalization, based upon earnings during a depression period only, is not compatible with the public interest. If, as here, such plan renders the legitimate, undisputed claims of general creditors and stockholders worthless, it is not fair and equitable, but confiscatory and discriminating.

The public interest is in no wise better served than by the preservation and protection of sound investment of private capital. No single thing could more clearly or certainly destroy the use of common stock as a means of financing railroad properties than the confirmation by the Courts of this unsound theory of the Commission. Railroad earnings are subject to the regulations and restrictions imposed by the Commission. They are also subject, like the

earnings of other corporations, to the vicissitudes of business cycles. Because of the large capitalization necessarily required and the public nature of the service [953] rendered, it is peculiarly important and in the public interest that such investments, when made by the private investor, shall be in the nature of conservative, long-term investments. Security of investment coupled with a fair but by no means high return is to be desired. It is in the public interest, emphatically, that men shall be able to invest in, or extend credit to, the railroads of the land, who are more concerned with the safety of the investment than with the payment of dividends. There could be no more deadly blow to railroad credit than for the Commission to adopt, with the approval of the Courts, the position that, at the end of any downward cycle of business prosperity and decreased earnings, reorganization of railroads would be permitted upon a plan which, ignoring investment values and normal earnings on them, would render the claims of unsecured creditors and stockholders valueless. Safe extensions of credit to railroads would thereafter be impossible, except where secured by mortgages on the property. Common stock would disappear as a safe medium of investment and shares issued on whatever basis would indeed become "mere tokens of stock market speculation."

The principal here involved transcends the boundaries of the case now before this Court. It affects directly the welfare of every railroad in the country.

Your petitioner contends that there is nothing incompatible with the public interest, in the instant case, in a capitalization fairly based on the true values of the Debtor's property, by the structure of which the issue of bonds and preferred stock to the secured creditors might be authorized to the extent necessary to pay their claims and *in addition by authorizing the issue of common stock, of no-par value, sufficient fairly to satisfy the claims of the two general creditors and of the stockholders.* Since such shares are without par value, there is no reason why, except for the purpose of [954] equitable division among the claimants, any dollar amount of capitalization should be fixed thereon. The essential characteristic of common stock with no par value is simply that it represents a fractional interest in property, whatever the value of the property may be. The total number of such shares represents only the number of units into which the equity in the reorganized company is divided. Save for purposes of distribution to satisfy claims, there is no more reason to allocate a value of \$100 to such proposed stock than \$200, or \$25, or \$1. Nor is there any reason for assuming that such shares when issued must or should earn \$3 per share, or \$6, or any other amount. The shares in the aggregate represent the whole equitable ownership of the property. Their value is fairly and precisely determined by the division of the net earnings, after payment of bond interest, fixed charges and dividends on preferred stock, among the holders of such no-par-value stock.

"A plan of reorganization must meet two requirements: it should give to each creditor and stockholder the value of his interest in the property, and it should fully recognize the priority of claims."

In re Dutch Woodcraft Shops—14 Fed. Supp. 467

The primary right of unsecured creditors to the assets of an insolvent corporation remaining after lienholders are satisfied, must be adequately protected.

Kansas City Terminal Rwy. v. Central Union Trust Co. 271 U. S. 445

But this rule does not require the impossible and make it necessary to pay an unsecured creditor in cash, as a condition of stockholders retaining an interest in the property. His interest can be preserved by the issuance to him on equitable terms of shares of stock, preferred or common.

Northern Pacific Rwy. Co. v. Boyd, 228 U. S. 482, P. 508 [955]

And where a plan is not fair and equitable as a matter of law, it cannot be approved by the Court, even though the percentage of the various classes of security holders required for confirmation of the plan has consented.

"Congress has required both that the required percentages of each class of security holders approve the plan and that the plan be found to be fair and equitable. The former is not a

substitute for the latter. The court is not merely a ministerial register of the vote of the several classes of security holders. All those interested in the estate are entitled to the court's protection. . . . Every important determination by the court calls for an informed, independent judgement."

National Surety Co. v. Coriell, 289 U. S. 426, p. 436

See also Taylor v. Standard Gas & Elec. Co. 306 U. S. 307

and Case v. Los Angeles Lumber Products Company, Ltd.-U. S.
(decided Nov. 6, 1939)

It is true that the three cases just cited arose and came before the court under Section 77B, but your petitioner believes and contends that the principles applied by the Supreme Court in interpreting Section 77B are essentially the same as the principles to be applied to the interpretation of Section 77, and to cases arising thereunder.

X. Treatment of Secured Creditors discriminatory and Unfair as to General Creditors:

Your petitioner believes and the valuation made by the Commission indicates that the value of the Debtor's property is \$120,000,000. The Commission Plan proposes to turn over the property of the Debtor to the reorganized company upon a new capital structure, as follows:

Undisturbed Equipment Trusts and Leases.....	\$ 2,750,050
New First Mortgage 4% Bonds.....	10,000,000
New Income Mortgage 4½% Bonds.....	21,219,075
New 5% Participating Preferred Stock.....	31,850,297
<hr/>	
Total Securities Prior to Common Stock.....	\$65,819,422

And 319,441 shares of Common Stock without par value. [956]

By the allocation of all of the bonds, preferred and common stock of the new company to the present secured creditors, the Plan appropriates the entire \$120,000,000 of the Debtor's assets to the satisfaction of secured claims which involve but \$87,880,660. Your petitioner contends that this involves an overpayment of the claims of secured creditors, and renders the proposed Plan unfair and inequitable as to all interests junior thereto, and is an appropriation of the property of your petitioner without due process of law and in violation of the law of the land.

Your petitioner contends that securities in the reorganized company should be authorized in an amount sufficient to equal in full the claims, including principal and interest, of the holders of existing first mortgage bonds, the Reconstruction Finance Corporation, the Railroad Credit Corporation, and A. C. James Company, in the form of new Income Bonds and Participating Preferred Stock and issued to each such class of secured creditors; that the value of the property still remaining, which would be approximately \$32,000,000, should be al-

located to the general creditors and present shareholders, in the form of common stock without par value; that such common stock should be issued in payment of the claims of your petitioner and The Western Pacific Railroad Corporation as general creditors to be taken at \$100 per share, and the residue of such shares then remaining should be issued to The Western Pacific Railroad Corporation as the owner of the preferred and common stock of the Debtor Company.

XI. Amendments to Plan Requested by your Petitioner:

Your petitioner respectfully asks that the Plan promulgated by the Commission be referred back to the Commission, as provided in Section 77 (e), for correction and modification in respect to the matters hereinabove set forth, and in [957] conformity with the law of the land, and particularly as follows:

1. By amending the Order of June 21, 1939, Subdivision B, page 2, to provide for the authorization of the New Income Mortgage 4% Bonds of the face value of one-half of the aggregate claims against the Debtor to January 1, 1939, including accrued interest, held by each of the secured creditors, including the present First Mortgage Bondholders, the Reconstruction Finance Corporation, the Railroad Credit Corporation and A. C. James Company; and for the authorization of new 5% Participating Preferred Stock of the face value

of one-half of the aggregate of the claims, including interest.

2. By amending the Order of June 21, 1939, Subdivision P, paragraph 2, 3, 4 and 5, to provide that the present First Mortgage Bondholders, the Reconstruction Finance Corporation, the Railroad Credit Corporation and A. C. Jones Company shall each receive for its existing claim, including accrued interest to January 1, 1939, new Income Mortgage 4% Bonds to the extent of one-half thereof, and new 5% Participating Preferred Stock to the extent of one-half thereof.

3. By amending Subdivision P, paragraphs 6 and 7, of the Plan, page 28, Order of June 21, 1939, to provide as follows:

P. 6—The Western Realty Company shall receive for its unsecured claim of \$50,000, together with interest accrued thereon to January 1, 1939, in the sum of \$11,667, 617 shares of common stock without par value; and The Western Pacific Railroad Corporation shall receive for its unsecured claim of \$5,768,746 together with interest accrued thereon to January 1, 1939 in the sum of \$1,980,475, 77,492 shares of common stock without par value.

P. 7—The Western Pacific Railroad Corporation, as the owner of all of the 283,000 shares of the preferred stock, and all of the 475,000 shares of the common stock of the Debtor, shall receive for its holding 241,332 shares of common stock without par value.

Wherefore, your petitioner respectfully prays (a) that the Court return the Commission Plan to the Interstate [958] Commerce Commission with its recommendation that it be corrected and amended as herein set forth; (b) that unless said Commission Plan be so corrected and amended, it be disapproved by the Court as unfair, inequitable and discriminatory to your petitioner as well as to other parties in interest and as not being in conformity with the law of the land; and for such other and further relief as the Court may deem just and proper.

THE WESTERN REALTY COMPANY

By D. C. DeGRAFF

LEROY R. GOODRICH

Attorney for Petitioner

State of California,

City & County of San Francisco—ss.

D. C. DeGraff being duly sworn, deposes and says, that he is an officer, to-wit: the Auditor of The Western Realty Company, a corporation; that as such officer he is duly authorized to sign and verify the foregoing Objections on behalf of said corporation; that he has read the same, and that the same is true except as to those matters stated therein to be on information and belief and as to those matters he believes it to be true.

D. C. DeGRAFF

Subscribed and sworn to before me this 5th day of December, 1939.

[Seal] FLORA HALL

Notary Public in and for City and County of San Francisco, State of California.

[Endorsed]: Filed Dec. 8, 1939. [959]

[Title of District Court and Cause.]

STIPULATION AS TO FACTS NOT IN
DISPUTE*

Whereas the Debtor has been in process of reorganization under Section 77 of the Federal Bankruptcy Act since August 2, 1935; and

Whereas hearings have been held before the Interstate Commerce Commission (hereinafter referred to as the Commission) and a Report and Order on Further Consideration approving a modified plan of reorganization for the Debtor [960] has been issued by the Commission under date of June 21, 1939; and

Whereas such plan of reorganization (hereinafter referred to as the Commission Plan) together with the record before the Commission has been certified to the Court herein; and

[Clerk's Note: *The Stipulation as to Facts not in Dispute has been amended to conform to Exhibit "N" thereto, Memorandum of Corrections and changes in 'Stipulation as to Facts not in Dispute' and such Exhibit "N" will not be hereinafter set forth.]

Whereas the parties hereto desire to expedite the reorganization of the Debtor and to assist the Court in the determination of the issues before it by agreeing upon certain of the undisputed facts relating to such issues:

It is hereby stipulated and agreed by the parties to the proceedings herein:

1. For the purpose of aiding the Court in the determination of the issues, and for the purpose of any appeal, the parties hereto have entered into this Stipulation of Facts, which includes (a) facts which appear in the testimony and exhibits in the record certified to the Court by the Interstate Commerce Commission, and (b) additional facts not in dispute. Subject to the reservations hereinafter contained, the matters of fact hereinafter set forth may be treated by the Court as facts proved in open court. Notwithstanding this stipulation, the record in the proceedings before the Interstate Commerce Commission (Finance Docket No. 10913), and the exhibits filed therein, shall be a part of the record before this Court, and may be used by any party on argument or brief (free from the objection that any such facts from the Commission record or exhibits tend to limit, control or qualify facts herein set forth), and may be the basis of findings by the Court. The materiality, relevancy or [961] competency of any fact herein set forth may be disputed by any party, except that no objection based on the best evidence rule may be made. Any party may

call witnesses and offer any proof for the purpose of proving such additional facts as such party may see fit, free from the objection that such additional facts tend to limit, control or qualify facts herein set forth. All figures and statistical data are subject to check prior to the date set for the hearing in this proceeding. The Trustee under the General and Refunding Mortgage reserves the right to contend that it is not bound by any evidence offered before the Commission before it became a party to the proceedings before the Commission. [962]

2. The Debtor is a railroad corporation organized and existing under the laws of the State of California. On and prior to August 2, 1935, it was engaged in the operation of its railroad and properties as a common carrier of persons and property for hire in interstate and intrastate commerce in and between the States of California, Nevada and Utah, and was not a street, suburban or interurban electric railway. On August 2, 1935, and for more than six months prior thereto, it had its principal operating office in the City of San Francisco, in the State of California, in the Northern District of California, Southern Division.

3. On August 2, 1935, the Debtor filed its petition in the Court stating that it was unable to meet its debts as they matured and that it desired to effect a reorganization under Section 75 of the Federal Bankruptcy Act, as amended. Simultaneously therewith it filed a copy of said petition with the Interstate Commerce Commission. On said date the

Court, being satisfied that said petition complied with said Section 77 and had been filed in good faith, entered an order approving said petition as properly filed and authorizing and directing the Debtor, pending further order of the Court, to continue in possession of and to operate its railroad and properties wherever situate and otherwise to manage, operate and conduct its business subject to the supervision and control of the Court. Pursuant to said order and supplemental orders entered herein, the railroad and properties of the Debtor were operated by the Debtor as from August 1, 1935, to November 13, 1935.

4. On August 2, 1935, the Court entered an order which, among other things, restrained and enjoined all persons [963] and corporations holding collateral theretofore pledged by the Debtor as security for its notes or obligations from selling, converting or otherwise disposing of such collateral or any part thereof until further order of the Court. Said restraining order and injunction has not been modified or revoked.

5. On August 31, 1935, the Court entered an order that a hearing be held on September 23, 1935, for the appointment of one or more Trustees of the Debtor's property. Notice having been given and published as provided in said order, and said notice having been in accordance with the provisions of paragraph 1 of Subsection (c) of said Section 77, hearings were had before the Court on September 23, 1935, for the appointment of Trustees. After

said hearings, the Court on September 23, 1935, appointed T. M. Schumacher, chairman of the Executive Committee of the Debtor, Charles Elsey, President of the Debtor, and Sidney M. Ehrman, who within one year prior to the date of the order had not been an officer, director or employee of the debtor corporation, or of any subsidiary corporation, or any holding company connected therewith, as Trustees of the properties of the Debtor, said appointment to become effective as of the beginning of business on October 1, 1935, upon ratification thereof by the Interstate Commerce Commission as provided in Subsection (c) of said Section 77.

6. On September 30, 1935, said order was modified by an order of the Court to provide that appointment of said Trustees should be effective as of the beginning of business on the first day following the ratification of said appointments by the Interstate Commerce Commission. On October 30, 1935, the Interstate Commerce Commission entered its order ratifying the appointment of Messrs. Schumacher and Ehrman as Trustees. [964]

7. Thereafter, by order entered November 9, 1935, the Court fixed the amounts of the bonds of the Trustees and confirmed the appointment of Messrs. Schumacher and Ehrman as such Trustees. Thereupon, on November 13, 1935, the Trustees qualified and began, and have since continued, to operate the business of the Debtor, subject to the control of the Court and subject to the jurisdiction of the Interstate Commerce Commission.

8. By ex parte order entered August 20, 1935, the Court divided the creditors and stockholders of the Debtor into the following classes:

(1) First Mortgage 5% Bonds, hereinafter called the First Mortgage Bonds (\$49,290,100), principal amount, issued under the First Mortgage executed July 14, 1916, as of June 26, 1916 (hereinafter called the First Mortgage) by the Debtor to First Federal Trust Company and Henry E. Cooper, Trustees (Crocker First National Bank of San Francisco and Samuel Armstrong, successor Trustees). Said bonds provide that interest shall be paid on the principal amount thereof at the rate of 5% per annum from the date of issue to the date of payment. No interest has been paid thereon since September 1, 1933, except \$250.00 on Coupon No. 38 due March 1, 1935, paid November, 1935. Unpaid interest from September 1, 1933, to August 2, 1935, computed at 5% amounts to \$4,730,480.42 and from August 2, 1935, to January 1, 1939, amounts to \$8,413,546.24, or an aggregate of \$13,143,776.66.)

(2) General and Refunding Mortgage Bonds, hereinafter called the Refunding Mortgage Bonds (\$18,999,500 principal amount issued under the General and Refunding Mortgage executed February 29, 1932, as of January 1, 1932 (hereinafter called the Refunding Mortgage) by the Debtor to The Chase National Bank of the City of New York, Trustee (Irving Trust Company, successor Trustee). None of such Bonds has been issued except by way of pledge as hereinafter stated. The entire \$18.-

999,500, principal amount, thereof are pledged as collateral under the loans of the Debtor held by A. C. James Co., Reconstruction Finance Corporation and The Railroad Credit Corporation. Said bonds provide that interest shall be paid on the principal amount thereof at the rate of 5% per annum from the date of issue to the date of payment. No interest has ever been paid thereon.)

(3) The Debtor's secured promissory notes to A. C. James Co. (\$4,999,800, face amount. Said notes provide [965] that interest shall be paid on the face amount thereof at the rate of 5% per annum from the date of issue to the date of payment. No interest has been paid thereon since January 1, 1934. Interest from January 1, 1934, to August 2, 1935, computed at 5% amounts to \$396,511.92 and from August 2, 1935, to January 1, 1939 (the effective date of the Plan) amounts to \$853,438.08, or an aggregate of \$1,249,950. Said notes are secured by the pledge of \$6,249,500, principal amount, of Refunding Mortgage Bonds, Series A, of which \$2,000,000, principal amount, are subject to the prior lien of The Railroad Credit Corporation as pledgee, A. C. James Co. having repledged said \$2,000,000, principal amount, of such Bonds with the Railroad Credit Corporation as additional collateral security for the Debtor's note to the Railroad Credit Corporation.)

(4) The Debtor's secured promissory notes to Reconstruction Finance Corporation (\$2,963,000, principal amount. Said notes provide that interest

shall be paid on the principal amount thereof at the rate of 6% per annum from the date of issue to the date of payment. No interest has been paid on said notes since November 30, 1933, January 26, 1934, December 25, 1933, December 29, 1933, and February 1, 1934, respectively. Interest from said respective dates to August 2, 1935, computed at 6%, amounts to \$393,691, and from August 2, 1935, to January 1, 1939, to \$506,179, or an aggregate of \$899,869.98. Said notes are secured by the pledge of \$10,750,000, principal amount, of Refunding Mortgage Bonds (\$8,750,000, Series A and \$2,000,000 Series B)*; by the pledge of voting trust certificates for 150,000 shares of Common Stock of the Denver and Rio Grande Western Railroad Company (being 50% of the outstanding voting stock of The Denver and Rio Grande Western Railroad Company) pledged with Reconstruction Finance Corporation by The Western Pacific Railroad Corporation, sole stockholder of the Debtor; and by second lien upon \$2,000,000, principal amount, of Refunding Mortgage Bonds, Series A, pledged with The Railroad Credit Corporation).

(5) The Debtor's secured promissory notes to The Railroad Credit Corporation. (\$2,445,609.88, principal amount. Said notes bear interest at varying rates from date of issue to the date of payment. No interest has been paid thereon since December 29, 1933. Interest from said date to August 2, 1935, computed at the rates provided in the notes amounts to, after deducting application of collateral re-

ceipts, \$57,307.94 and from August 2, 1935, to January 1, 1939, to \$88,006.29, or an aggregate of \$145,314.23. Said notes are secured by the pledge of \$4,000,000, principal amount, of the Refunding Mortgage Bonds (\$2,000,000 Series A and \$2,000,000 Series B), of which \$2,000,000 principal amount, Series A, were repledged with it by A. C. James Co. In addition, such notes are secured by a second lien upon all the securities pledged with Reconstruction Finance Corporation as collateral security for notes of the Debtor held by Reconstruction Finance Corporation; by a first lien on the Debtor's distributive share in the fund established under the Marshalling and Distributing Plan, 1931; by a first lien on the advances from the Western Pacific Railroad Corporation to the Debtor [966] in the sum of \$5,494,722; by a first lien on the advances made by the Western Pacific Railroad Corporation to Standard Realty and Development Company in the sum of \$120,000; and by a lien on the advances made by The Western Pacific Railroad Corporation to Sacramento Northern Railway in the sum of \$856,260, subject as to said latter advances to any and all rights and claims in respect thereof, if any, of the trustees or holders of any of the bonds issued under the First Mortgage).

(6) Equipment obligations to Baldwin Locomotive Works (assigned to Fidelity-Philadelphia Trust Company). \$188,799, principal amount, outstanding as of January 1, 1939).

(7) Equipment Trust Certificates (Series B) under agreement dated March 1, 1923. (The Chase National Bank of the City of New York, Trustee. As of January 1, 1939, all of said Equipment Trust Certificates had been paid off and discharged or moneys for the payment thereof had been deposited with the Trustee under said Equipment Trust Agreement.)

(8) Equipment Trust Certificates (Series C) under agreement dated March 15, 1924. (The Chase National Bank of the City of New York, Trustee. As of January 1, 1939, all of said Equipment Trust Certificates had been paid off and discharged or moneys for the payment thereof had been deposited with the Trustee under said Equipment Trust Agreement.)

(9) Equipment Trust Certificates (Series D) under agreement dated May 1, 1929. (The Chase National Bank of the City of New York, Trustee. \$365,000, principal amount, of such Certificates were outstanding as of January 1, 1939. \$73,000, principal amount, of such Certificates were paid off at their maturity on November 1, 1939, or funds for the payment thereof had been deposited with the Trustee under said Equipment Trust Agreement.)

(10) The Debtor's obligations as to advances made on open account by The Western Pacific Railroad Corporation. (As of January 1, 1939, the sum of such advances was \$5,768,791. No interest has been paid thereon since November 1, 1931. Interest on interest bearing portion of advances from said

date to August 2, 1935, computed at 5% amounts to \$1,042,510.59, and from August 2, 1935, to January 1, 1939, to \$937,918.52, or an aggregate of \$1,980,429.11. Such advances are wholly unsecured.)

(11) The Debtor's obligations as to advances made an open account by the Western Realty Company. (As of January 1, 1939, the sum of such advances was \$50,000. Such advances bear interest at the rate of 5% from the date of the making thereof to the date of payment. No interest has been paid thereon since May 1, 1934. Interest from said date to August 2, 1935, computed at 5% amounts to \$3,131.94, and from August 2, 1935, to January 1, 1939, to \$8,534.73, or an aggregate of \$11,666.67. Such advances are wholly unsecured.) [967]

(12) The Debtor's Preferred Capital Stock. (As of January 1, 1939, there were outstanding 283,000 shares of the par value of \$100 per share.)

(13) The Debtor's Common Stock. (As of January 1, 1939, there were outstanding 475,000 shares of the par value of \$100 per share.)

(14) All other claims, obligations and liabilities of the Debtor not hereinabove specifically described. None of the foregoing claims or obligations is affected by any plan of reorganization proposed before the Commission, by the Commission Plan, or by any modification thereof proposed in the objections to said Commission Plan, except items (1), (2), (3), (4), (5), (10), (11), (12), and (13) enumerated above.

9. In addition to the claims against the Debtor hereinabove in paragraph 8 described, there were issued, pursuant to the order of the Court entered October 5, 1938, as supplemented by the order entered November 7, 1938, \$10,000,000, principal amount, of Trustees' Certificates of Indebtedness, dated December 1, 1938, maturing December 1, 1939, bearing interest at the rate of 3% per annum and payable semi-annually as provided in said Certificates (said Certificates having been issued and disposed of at a discount from the par value thereof by an amount that, when added to the interest at said rate of 3% per annum from the date of issuance to the date of maturity, equals the amount of interest on said certificates for the same period at a rate of 4% per annum). Pursuant to the order of the Court entered November 29, 1939, the maturity of said [968] \$10,000,000 of Certificates was extended by endorsement to December 1, 1940, said Certificates to bear interest at the rate of 4% per annum, payable monthly.

10. There were also issued, pursuant to the order of the Court entered January 27, 1937, \$2,320,000, principal amount, of 3% Equipment Trust Certificates, Series of 1937, dated February 1, 1937 and maturing annually in the amount of \$155,000 each February 1, 1938 to 1951, inclusive, and \$150,000 on February 1, 1952. The proceeds of such Certificates, which were sold at slightly above par, were used as part payment for rolling stock purchased by the Debtor's Trustees. As of January

1, 1939, there were outstanding \$2,165,000, principal amount, of such Certificates.

11. On August 20, 1935, the Court, pursuant to the provisions of Paragraphs (7) and (8) of Subsection (c) of said Section 77, by order fixed September 15, 1935, as the date on or before which all claims and interests of creditors and stockholders of the Debtor should be filed or evidenced. Said order provided the manner in which such claims and interests should be filed or evidenced and required the Debtor to give notice to the corporate trustees under the Debtor's mortgages and equipment obligations, to A. C. James Co., Reconstruction Finance Corporation, The Railroad Credit Corporation, The Western Pacific Railroad Corporation and The Western Realty Company, by mailing a copy of said order to such persons or corporations at their respective addresses as shown by the records of the Debtor, and by publication of a brief summary of the order in a newspaper of general circulation published in the City of San Francisco and in [969] a newspaper of general circulation published in the Borough of Manhattan, City of New York. Such mailing and publication having been duly made as provided in said order prior to September 1, 1935, verified statements of claims or interests were filed by or on behalf of the holders or pledgees of the First Mortgage Bonds, Refunding Mortgage Bonds, and equipment obligations, as provided in said order, by the trustees under the respective mortgages or agree-

ments under which such Bonds and obligations were issued, and by A. C. James Co., Reconstruction Finance Corporation, The Railroad Credit Corporation, The Western Pacific Railroad Corporation (both as a creditor and as the sole stockholder of the Debtor) and The Western Realty Company at the time and in the manner provided in said order.

12. The Debtor, pursuant to the provisions of Paragraph (4) of Subsection (c) of said Section 77, and within the time limit set by the Court, filed with the Clerk of the Court a list of all known bondholders and creditors of the Debtor and the amounts and character of their debts, claims and securities, and the last known post office address or place of business of each bondholder and creditor, and a list of all known stockholders of the Debtor, with the last known post office address or place of business of each, copies of which list were transmitted by the Clerk to the Interstate Commerce Commission as required by the General Orders in Bankruptcy of the United States Supreme Court. [970]

13. By orders of the Court herein entered from time to time, the following have been given leave to intervene generally in this proceeding and to become parties hereto:

Crocker First National Bank of San Francisco and Samuel Armstrong, successors of First Federal Trust Company and Henry E. Cooper, as Trustees under the First Mortgage (the Trustees for the time being in office under

the First Mortgage, whether original or successors, being hereinafter sometimes called the First Mortgage Trustees);

The Chase National Bank of the City of New York, as Trustee under the Refunding Mortgage;

Irving Trust Company, successor to The Chase National Bank of the City of New York, as Trustee under the Refunding Mortgage (the Trustee for the time being in office under the Refunding Mortgage, whether original or successor, being hereinafter sometimes called the Refunding Mortgage Trustee);

Frederick H. Ecker, John W. Stedman and Reeve Schley, as a Committee representing a group of institutional holders of substantial amounts of the Debtor's First Mortgage Bonds (hereinafter referred to as the Institutional Bondholders Committee);

A. C. James Co.;

Reconstruction Finance Corporation;

The Western Pacific Railroad Corporation;
and

The Western Realty Company. [971]

14. A Plan of Reorganization was filed by the Debtor with the Court and the Interstate Commerce Commission on February 8, 1936, within the time and in the manner prescribed by Subsection (d) of said Section 77. Pursuant to said Subsection (d), the Interstate Commerce Commission,

after due notice to all stockholders and creditors of the Debtor, given by publication on February 28, and March 6, 1936, in one newspaper of general circulation in the City of San Francisco and one newspaper of general circulation in the Borough of Manhattan, City of New York, held public hearings on March 23, April 21, September 28, October 26, November 19 and December 9, 1936. Said notice of hearing also provided that plans of reorganization might be filed at any time before, or with consent of the Commission, during the hearing, by the Debtor's Trustees, or by or on behalf of creditors having not less than 10 per centum in amount of any class of creditors, or by or on behalf of stockholders being not less than 10 per centum in amount of any such class, or with the consent of the Commission, by any party in interest. In addition to the debtor's Plan, a plan was filed with the Commission on September 28, 1936, on behalf of the Institutional Bondholders Committee and on October 26, 1936, on behalf of A. C. James Co., the Commission having consented to the filing thereof. At such hearings, opportunity was given to any interested party to be heard on said Plans.

15. On or about August 1, 1937, the Bureau of Finance of the Interstate Commerce Commission issued a proposed report containing a recommended plan of reorganization to which exceptions were filed by the Debtor; the Institutional Bond- [972] holders Committee, the First Mortgage Trustees, the Refunding Mortgage Trustee, A. C. James Co.,

Reconstruction Finance Corporation and The Railroad Credit Corporation. Oral argument on said exceptions to said proposed report was had before the Interstate Commerce Commission at Washington on November 17, 1937.

16. On October 10, 1938, the Interstate Commerce Commission issued its original report and order (hereinafter referred to as the Original Report and Order) approving a plan of reorganization. The Commission transmitted a copy of said Original Report and Order, under the seal of the Commission, to the Court, which was filed with the Clerk of the Court in this proceeding on October 21, 1938, and became a part of the record herein.

17. Thereafter, on December 9, 1938, the Debtor, the Institutional Bondholders Committee, the Refunding Mortgage Trustee, A. C. James Co., Reconstruction Finance Corporation and the Railroad Credit Corporation filed their separate petitions with the Interstate Commerce Commission for rehearing and modification of said Original Report and Order and the plan of reorganization approved therein. Answers to certain of said petitions were filed with the Commission by the First Mortgage Trustees and The Railroad Credit Corporation. Proposals for modification of the Commission's Plan of October 10, 1938, were attached to or contained in such petitions. A rehearing on the basis of these petitions was granted by order of the Interstate Commerce Commission entered December

30, 1938, and oral argument on said petitions was had before the Commission on January 20, 1939.

18. Under date of June 21, 1939, the Commission [973] issued its "Report and Order on Further Consideration" (hereinafter referred to as the Supplemental Report and Order) approving a modified plan of reorganization (hereinabove and hereinafter referred to as the Commission Plan). By its said report and order of June 21, 1939, the Commission modified the original report of October 10, 1938, and revoked and rescinded the original order of October 10, 1938. Said Supplemental Report and Order were issued by the Commission prior to certifying to the Court, as required by Subsection (d) of said Section 77, the plan of reorganization approved by the Commission together with a transcript of the proceedings before the Commission and of the report and order approving the plan.

19. On or about August 1, 1939, and prior to the certifying to the Court of the Commission Plan and the record before the Commission, the Debtor filed a petition for rehearing and modification of said Commission Plan. Answers thereto were filed by certain parties. Said petition was denied by the Commission by a report and order entered September 19, 1939. Said Debtor's petition, said answers, and said report and order of the Commission of September 19, 1939, constitute a part of the record before the Commission.

20. Pursuant to the requirements of said Subsection (d) of said Section 77, the Interstate Com-

merce Commission on or about September 28, 1939, certified to the Court said Commission Plan together with a transcript of the proceeding before it and a copy of said Supplemental Report and Order approving said Commission Plan, and the same were filed in this proceeding by the Clerk of the Court on October 4, 5 and 6, 1939, and became a part of the record herein. [974]

21. On November 8, 1939, the Court, pursuant to the provisions of Subsection (e) and of Clause 8, of Subsection (c) of Section 77 of the Bankruptcy Act, entered its order fixing the time within which objections to the Commission Plan and claims for equitable treatment might be filed herein, fixing the time within which applications might be filed for expenses and fees incident to the reorganization, and fixing December 8, 1939, as the date for the filing of such objections and claims for equitable treatment and petitions for an allowance for compensation for services rendered or for expenses (including reasonable attorneys' fees) incurred, in connection with the proceeding and plan of reorganization up to and including October 31, 1939, and providing for the giving of due notice by the Debtor's Trustees to creditors and stockholders, or their representatives, and all other parties in interest.

22. Pursuant to said order of November 8, 1939, objections to said Commission Plan and Claims for equitable treatment were duly filed by or on behalf of the following parties in interest:

The Debtor;
The Institutional Bondholders Committee;
The Refunding Mortgage Trustee;
A. C. James Co.;
Reconstruction Finance Corporation;
The Railroad Credit Corporation;
The Western Pacific Railroad Corporation;
and
The Western Realty Company.

23. Pursuant to said order of November 8, 1939, [975] petitions for an allowance for compensation for services rendered or for expenses (including reasonable counsel fees) incurred, in connection with the proceeding and plan of reorganization, up to and including October 31, 1939, were filed by the following persons, corporations and committees:

The Debtor and its counsel;

The Institutional Bondholders Committee and its counsel;

Crocker First National Bank of San Francisco, as Corporate Trustee under the First mortgage;

Samuel Armstrong, as Individual Trustee under the First Mortgage;

The Chase National Bank of the City of New York, as Trustee (until November 13, 1936) under the Refunding Mortgage;

Irving Trust Company, as successor Trustee under the Refunding Mortgage;

A. C. James Co. and its counsel; and
Reconstruction Finance Corporation.

Said petitions fully disclosed, so far as can now be ascertained, the maximum amounts to be paid by the Debtor or by any corporation acquiring its assets for expenses and fees incident to the proceeding and the plan of reorganization through October 31, 1939.

24. By various orders entered in this proceeding the Debtor or the Debtor's Trustees have been authorized to enter into various contracts, leases and equipment agreements and leases extending beyond the period of the reorganization proceeding. The Commission Plan [976] provides for the adoption of all such contracts, leases and equipment agreements and leases by the Reorganized Company (which may be the Debtor corporation or a new corporation), and, therefore, satisfies the conditions imposed by said Section 77 or by the Court with respect to said contracts, leases and equipment agreements and leases.

25. The Debtor owns or operates 1,207.51 miles of standard gauge railroad. A main line extends eastward 924.17 miles from Oakland, California, to Salt Lake City, Utah. The Northern California Extension extends northward 11.81 miles from Keddie to Bieber, California, with operating rights from Bieber to Hambone, California—46.38 miles—over the Great Northern Railway. In addition to said main line mileage and the Northern California Extension, the Debtor has approximately 131.66 miles of branch line mileage springing from the Oakland-Salt Lake City line.

26. The Debtor's branches and the mileage thereof are as follows:

Niles Jct. to San Jose, Cal.....	23.07 miles
Carbona to Moy, Cal.....	4.43 miles
Terminous Jct. to Terminous, Cal.....	7.92 miles
Calpine Jct. to Calpine, Cal.....	12.62 miles
Hawley to Loyalton, Cal.....	12.79 miles
Gulling Jct. to Bridge 6, Cal.....	2.41 miles
Reno Jct. to Reno, Nevada.....	33.11 miles
Main Line to Oregon Short Line, Wells, Nev.	1.18 miles
Ellerbeek to M. P. 371 and Dolomite, Utah.....	5.85 miles
Burmester to Warner, Utah.....	15.52 miles
North of Stockton to Stockton.....	5.90 miles
Glennvale to Bradford Winery.....	1.61 miles
[977]	
Adelaide to Hutchinson's Mill.....	1.01 miles
Land to Bidwell Bar.....	2.02 miles
Spanish Creek (Peak) Spur.....	0.60 miles
Blairsdon to Davies Mill.....	1.00 miles
Gerlach to connection with Pacific Portland Cement Company's railroad.....	6.02 miles
Total.....	131.66 miles

27. The Debtor also owns an undivided one-half interest in the following:

1. Tracks owned jointly with Southern Pacific Company in Oakland, Alameda County, California—total length—4.41 miles.

2. Track owned jointly with Southern Pacific Company near Niles, Alameda County, California—total length—0.24 miles.

3. Tracks owned jointly with Southern Pacific Company in San Jose, Santa Clara County, California—total length—0.36 miles.

4. Track owned jointly with California Fruit Exchange at Graeagle—total length—0.01 miles.

5. Track owned jointly with Southern Pacific Company at Reno, Washoe County, Nevada—total length—0.17 miles.

6. Track owned jointly with Oregon Short Line Railroad in Salt Lake City, Salt Lake County, Utah—total length—0.30 miles.

28. The Debtor also owns an undivided one-third interest in the following:

Tracks owned jointly with Southern Pacific Company and Sacramento Northern Railway in Sacramento County, California—total length—0.13 miles.

29. The Debtor also operates 4.2 miles of ferry service from Oakland to San Francisco and 183.13 miles of second main track, of which 182.91 miles between Weso and Alazon, Nevada, are owned by the Southern Pacific. The territory in which the second main track is operated is [978] known as the "Paired Track" district since the lines of the Debtor and the Southern Pacific are used as a double track railroad by both the Debtor and the Southern Pacific.

30. The Debtor also owns all the outstanding capital stock of Sacramento Northern Railway, an electrically operated standard gauge freight and passenger railroad operating 276.2 miles of road serving and connecting San Francisco and Oakland.

with various Sacramento Valley cities, principally Pittsburg, Vacaville, Sacramento, Woodland, Marysville, Colusa and Oroville. 9,995 shares of the capital stock of Sacramento Northern Railway of a par value of \$999,500, together with \$5,213,475, principal amount, of First Mortgage Bonds of Sacramento Northern Railroad and \$4,524,744 face amount of notes of Sacramento Northern Railway are physically pledged under the Debtor's First Mortgage. The Debtor also holds obligations of the Sacramento Northern Railway as to advances made on open account to it by the Debtor in the sum of \$4,348,356.42, which the First Mortgage Trustees claim are subject to the lien of the First Mortgage.

31. Through its ownership of more than 97% of the outstanding capital stock of the Tidewater Southern Railway, it controls that subsidiary, which operates a standard gauge steam freight line aggregating 61.38 miles of road connecting Stockton with Manteca, Escalon, Modesto and Turlock in the San Joaquin Valley of California. All of the capital stock of said Tidewater Southern Railway owned by the Debtor (1,147,968 shares of the par value of \$1 per share), together with a note of said Railway in the amount of \$508,278.61 due March 1, 1945, and bearing interest at the [979] rate of five per cent. per annum, payable on March 1 and September 1 of each year, is physically pledged under the Refunding Mortgage.

32. The Debtor also owns all of the outstanding capital stock of Deep Creek Railroad Company

which, prior to its abandonment in July 1939, owned and operated a standard gauge steam railroad from Wendover to Gold Hill, Utah, a distance of 46.0 miles. The capital stock of Deep Creek Railroad Company (4,500 shares of par value of \$100 per share) is physically pledged under the First Mortgage. A note of Deep Creek Railroad Company in the face amount of \$45,000 is physically pledged under the Refunding Mortgage, but the lien created by said latter pledge is claimed by the First Mortgage Trustees to be subordinate to the lien thereon of the First Mortgage. The Debtor also holds obligations of Deep Creek Railroad Company as to advances made on open account to it by the Debtor in the sum of \$128,230.40, which the First Mortgage Trustees claim are subject to the lien of the First Mortgage.

33. The Debtor also owns all the outstanding capital stock (except directors' qualifying shares) of Standard Realty and Development Company, which has various holdings of real property. Such capital stock (4,000 shares of the par value of \$100 per share) is physically pledged under the First Mortgage. A note of Standard Realty and Development Company in the face amount of \$251,273.07 is physically pledged under the Refunding Mortgage, but the lien created by said latter pledge is claimed by the First Mortgage Trustees to be subordinate to the lien of the First Mortgage. The Debtor also holds [980] obligations of Standard Realty and Development Company as to advances made on open

account to it by the Debtor in the sum of \$363,310.86, which the First Mortgage Trustees claim are subject to the lien of the First Mortgage.

34. Jointly operated affiliated railroad companies are:

(a) The Salt Lake City Union Depot & Railroad Company (capital stock owned 50% by The Denver and Rio Grande Western Railroad Company and 50% by Debtor). The capital stock owned by the Debtor (996 shares of the par value of \$100 per share) is physically pledged under the First Mortgage.

(b) Central California Traction Company, operating an electric freight railroad from Stockton to Sacramento, California, 53.78 miles (capital stock owned one-third by Atchison, Topeka & Santa Fe Railway Company, one-third by Southern Pacific Railroad Company and one-third by the Debtor). The capital stock of the Traction Company owned by the Debtor (2,642-2/3 shares of Preferred Stock and 967-2/3 shares of Common Stock, each class of the par value of \$100 per share) and First Mortgage Bonds of the Traction Company in the principal amount of \$270,000 are physically pledged under the Refunding Mortgage. The Debtor also holds obligations of the Traction Company as to advances made on open account to it by the Debtor in the sum of \$208,346.47, which the Refunding Mortgage Trustee

claims are subject [981] to the lien of the Refunding Mortgage.

(c) Alameda Belt Line, operating 17.85 miles of terminal switching line in the city of Alameda on San Francisco Bay (capital stock owned one-half by Atchison, Topeka & Santa Fe Railway Company and one-half by the Debtor). The capital stock owned by the Debtor (4,656 shares of the par value of \$100 per share) is physically pledged under the Refunding Mortgage. The Debtor also holds obligations of Alameda Belt Line as to advances made on open account to it by the Debtor in the sum of \$71,975.55, which the Refunding Mortgage Trustee claims are subject to the lien of the Refunding Mortgage.

None of the above subsidiary or affiliated companies has filed a petition under Section 77 of the Bankruptcy Act nor is any of them being operated by a receiver.

35. The Debtor, a California corporation, was organized on June 6, 1916 and as of July 14, 1916, succeeded to the railroads and other properties of the Debtor's predecessor company, Western Pacific Railway Company, sold at foreclosure on June 28, 1916, at an upset price of \$18,000,000 pursuant to a plan of reorganization dated December 15, 1915, a copy of which is annexed to a copy hereof filed with the Court, marked Exhibit A. Pursuant to

said foreclosure sale, said properties of said predecessor company on July 14, 1916 were conveyed to the Debtor by a deed dated July 1, 1916; which is referred to in Clause First of the Granting Clauses of the First Mortgage dated June 26, 1916.

36. Pursuant to said plan of reorganization of the [982] predecessor company two corporations were organized: (1) The Western Pacific Railroad Corporation, a Delaware corporation, as holding company, and (2) the Debtor as purchaser of said properties at said foreclosure sale, and owner thereof.

37. Upon incorporation, the Debtor had an authorized capital stock of \$75,000,000, divided into \$47,500,000 of Common Stock and \$27,500,000 of Preferred Stock, consisting of 475,000 shares of Common Stock and 275,000 shares of Preferred Stock of the par value of \$100 each, all owned by The Western Pacific Railroad Corporation. All of said capital stock was issued in the 1916 reorganization of the Debtor's predecessor in exchange for the predecessor's First Mortgage Bonds in the aggregate principal amount of \$50,000,000, the proceeds of such Bonds having been used in constructing and equipping portions of the property now owned by the Debtor. An additional \$800,000 par value of Preferred Stock was on December 17, 1929 issued and sold to The Western Pacific Railroad Corporation for cash at par.

38. In addition to the \$75,000,000 of capital stock, the Debtor began operations in July, 1916,

with \$20,000,000 of its First Mortgage Bonds outstanding. Said Bonds had been sold in connection with the reorganization of the Debtor's predecessor. The proceeds thereof, amounting to \$18,000,000, were used as follows:

\$1,000,000 held in treasury for working capital.

\$15,000,000 expended for capital purposes.

\$2,000,000 expended for purpose (a) of paying incorporation expenses of Debtor and its parent company and the issuance of their securities, (b) compensation of trustees and counsel fees incurred in connection with foreclosure of predecessor company's mortgage, (c) payment of distributive shares of non-participating first mortgage bondholders of the predecessor company (approximately \$900,000), (d) reorganization expenses, and (e) expenses in connection with enforcement of claims against Denver and Rio Grande Railroad Company.

39. The balance of the authorized First Mortgage Bonds were issued at various times between 1921 and 1932 and were sold at varying prices, the highest being 99.75 and the lowest 85. The principal amount of the various issues, the year of issue, the price at which sold, the proceeds realized by the Debtor, and the general purpose of the issue, are as follows:

Year Issued	Face Amount	Price	Amount Realized	Purpose of Issue
1916	\$20,000,000	90%	\$18,000,000	Pay certain expenses of reorganization as specified in Plan, provide working capital and finance capital expenditures thereafter under Sec. 1 of Article Second of First Mortgage.
1921	\$ 4,180,000	85%	\$ 3,553,000	Purchase of Sacramento Northern Railroad properties through Sacramento Northern Railway.
1922	\$ 3,000,000 of 6% bonds (only 6% bonds ever issued under the Mortgage and subse- quently re- funded—see below.)	97.7779%	\$ 2,933,337	Retire outstanding Equip- ment Trust Certificates.
1925	\$ 4,000,000	94.25%	\$ 3,770,000	General Capital Purposes.
1926	\$ 2,600,000	99.75%	2,593,500	General Capital Purposes.
[984]				
1927	\$ 2,950,000	Portion Exchanged at par for out- standing 6% bonds; portion sold and discounted at 99.517%	\$2,678,500 face amount sold; pro- duced \$2,665,562.84 cash; balance \$271,500 ex- changed for like amount of retired 6% bonds.*	Substitution of these 5% bonds for all of the Series "B" \$3,000,000 6% bonds then outstanding in ag- gregate amount of \$2,950,000.

* \$271,500 face amount of 6% bondholders elected to receive in lieu of the redemption price of the 6% bonds, 5% bonds of the new issue of the same face amount, together with a cash premium of 3%.

Year Issued	Face Amount	Price	Amount Realized	Purpose of Issue
1929	5,000,000	97.50%	4,875,000	General capital purposes.
1930	572,800	99%	567,072	Purchase of San Francisco-Sacramento Railroad Company properties through Sacramento Northern Railway.
1930	5,000,000	97.50%	4,875,000	General Capital purposes of company and of subsidiary, Sacramento Northern Railway.
Various times— 1931— 1932	5,000,000	97.50%	4,875,000	To finance in part construction and/or acquisition of Northern California Extension.
1931	645,000	97.50%	628,875	General capital purposes.

40. As of January 1, 1939, the effective date of the Commission Plan, \$49,290,100 principal amount of the First Mortgage Bonds were outstanding. The Debtor made payment of the interest on its First Mortgage Bonds until and including the instalment due September 1, 1933. By the terms of an extension agreement between the Debtor and holders of 86.58% in principal amount of the First Mortgage Bonds, [985] interest due in the year 1934 on such Bonds and aggregating \$2,133,800 was extended to January 1, 1937. The interest maturing in 1934 on the notes of the Debtor held by A. C. James Co., Reconstruction Finance Corporation and The Railroad Credit Corporation, and principal and interest falling due during the calendar year

1934 on loans of The Western Pacific Railroad Corporation, were also extended to January 1, 1937, or to such date prior to January 1, 1937, as receivers should be appointed for the Debtor or a petition under Section 77 should be filed. No interest payment on the First Mortgage Bonds has been made since September 1, 1933. I. C. C. Exhibits 117 to 123, inclusive, are true copies of the documents constituting the Debtor's Extension Agreement of 1934.

41. In 1918, the Debtor issued \$3,600,000 equipment Gold Notes, Series A, and sold the same at 97.049166, the total proceeds realized therefrom aggregating \$3,493,770. The outstanding balance of these Notes was retired through the issue of a like face amount of 6% First Mortgage Bonds in 1922, which Bonds were refunded in 1927 by the issuance of \$2,950,000 of 5% First Mortgage Bonds.

42. In addition to the aforesaid Equipment Gold Notes issued in 1918, the Debtor, prior to the filing on August 2, 1935, of its petition for reorganization under Section 77, issued the following Equipment Trust Obligations (I. C. C. Exhibits Nos. 57 and 105):

1923—\$5,600,000 5½% Equipment Trust Certificates Series "B", sold at 97.25%; amount realized \$5,446,000.

1924—\$3,105,000 5½% Equipment Trust Certificates Series "C", sold at 100%; amount realized \$3,105,000. [986]

1929—\$1,095,000 5% Equipment Trust Certificates Series "D", sold at 97.25%; amount realized \$1,064,887.50.

1931—\$629,330 5% Equipment Obligations (commonly referred to as Baldwin Locomotive Works Lease) issued to Baldwin Locomotive Works in payment for new locomotives. Obligations assigned to Fidelity-Philadelphia Trust Company.

43. As of January 1, 1939, all of said Series B and Series C Equipment Trust Certificates (the final instalments of which matured on March 1, 1938 and December 1, 1938, respectively) had been paid off or cancelled, or funds for their payment had been deposited with the trustees under said equipment trusts. As of January 1, 1939, there were outstanding under the Series D Equipment Trust \$365,000, principal amount, of Certificates, \$73,000, principal amount, of such Certificates mature on each November 1 from 1939 to 1943.

44. As of January 1, 1939, there were outstanding under the Baldwin Locomotive Works Lease \$188,799, principal amount, of Equipment Obligations. \$31,466.50 of such obligations mature on each seventh day of January and July from 1939 to 1941.

45. As of January 1, 1939, there were outstanding unpaid instalments amounting to \$30,311.35 under a Conditional Sale Contract covering the purchase of three lounge cars from the Pullman Company. Instalments thereunder are payable monthly

at the rate of four cents per mile, the minimum monthly instalment being \$2,000.

46. As of January 1, 1939, there were also outstanding \$2,165,000 principal amount, of 3% Equipment Trust [987] Certificates, Series of 1937. Such Certificates are a part of a total issue of \$2,320,000, principal amount, of Certificates issued and sold at slightly above par by the Trustees pursuant to an order of the Court entered January 27, 1937. \$155,000, principal amount, of such Certificates mature on each February 1 from 1939 to 1951, and \$150,000 on February 1, 1952.

47. Since the year 1916 the Debtor has paid dividends as follows:

Year	Dividend Declared	Dividend Paid	Rate of Dividend
1916	None	None	None
1917	None	None	None
1918	None	None	None
1919	None	None	None
1920	None	None	None
1921	\$1,650,000	\$1,650,000	6% Preferred
1922	1,650,000	1,650,000	6% Preferred
1923	1,650,000	1,650,000	6% Preferred
1924	1,650,000	1,650,000	6% Preferred
1925	4,453,420*	4,453,420*	(See footnote)

*\$2,374,970, being a 5% dividend on common stock (\$5.00 per share on 474,994 shares)—special dividend, and

\$1,650,000, 1925 regular dividend on preferred stock (\$6.00 per share on 275,000 shares and an arrears dividend of \$428,450 on Preferred Stock \$1.558 per share of Preferred Stock account arrears on Preferred Stock dividends)—dividends on Preferred Stock being cumulative at that time.

Year	Dividend Declared	Dividend Paid	Rate of Dividend
1926	1,650,000	1,650,000	6% Preferred
1927	412,500	412,500	1½% on "
1928	None	None	None
1929	None	None	None
1930	None	None	None
1931	None	None	None
1932	None	None	None
1933	None	None	None
1934	None	None	None
1935	None	None	None
1936	None	None	None
1937	None	None	None
1938	None	None	None

[988]

48. In the course of the year 1926, Mr. Arthur Curtiss James and certain corporations, practically all the stock of which was, and is, owned by Mr. James, acquired by purchase in the open market and now own the following shares of Preferred and Common Stock of the Western Pacific Railroad Corporation, the sole stockholder of the Debtor:

Owner	No. of Shares		Total
	Preferred	Common	
Arthur Curtiss James	1,000	1,000	2,000
Curtiss Southwestern Corporation	2,000	310,690	312,690
Curtiss Southwestern Company	30,400	40,700	71,100
Total	33,400	351,398	385,790

As of January 1, 1939, said 385,790 shares constituted 40.36% of the 955,663 shares of outstanding capital stock of the Western Pacific Railroad Corporation.

49. The number of holders of common stock and preferred stock, respectively, of the Western Pacific Railroad Corporation and the number of shares held in the respective amounts set forth below are as follows:

Number of Shares Held from	Number Common Stockholders	Number Preferred Stockholders
1 to 50 Inc.	1532	2314
50 to 100 "	570	667
100 to 200 "	191	246
200 to 300 "	49	77
300 to 500 "	54	79
500 to 1000 "	38	50
Over-1000	22	41
Total	2456	3474

[989]

50. Upon a survey of operating properties of the Debtor made in 1927, after Mr. James acquired his interest in the parent company of the Debtor, it appeared that large expenditures were necessary for the rehabilitation of the Debtor's property. Dividend payments were therefore stopped and an Improvement Program initiated which contemplated the expenditure of approximately \$18,000,000 to rehabilitate the Debtor's property. Approximately \$8,000,000 was spent on this program before the rapid reduction in gross revenues commencing in the summer of 1929 and continuing during the subsequent depression years made the discontinuance of the Improvement Program necessary, and it was abandoned in 1931.

51. Meanwhile the Debtor had commenced the construction of the so-called Northern California

Extension, designed to connect the main line of the Western Pacific at or near Keddie, California, with the Great Northern Railway Company at or near Bieber, California. Construction of the Northern California Extension was commenced on August 16, 1930. The cost of constructing, to May 31, 1932, the Northern California Extension was \$10,183,641.90. The details of the financing of the construction of said Extension are hereinafter more fully set forth.

52. The Refunding Mortgage was executed on February 29, 1932, as of January 1, 1932, with The Chase National Bank as Trustee. On November 13, 1936, Irving Trust Company was substituted as such Trustee in the manner provided for in the Refunding Mortgage. Said Mortgage authorized the issue for various purposes therein set forth of not to exceed \$100,000,000 of Refunding Mortgage Bonds at any one time outstanding. [990]

53. As of January 1, 1939, \$18,999,500, principal amount, of Refunding Mortgage Bonds were held as collateral to secure promissory notes of the Debtor held by A. C. James Co., Reconstruction Finance Corporation and The Railroad Credit Corporation.

54. The dates of the notes held by A. C. James Co., the dates of maturity thereof, the amount thereof and the disposition of the proceeds thereof, are as follows:

Date of Note	Date Due	Amount	Disposition of Proceeds
March 28, 1932	March 28, 1935	\$4,504,000	To refund \$4,504,000 of Debentures hereinafter mentioned, the proceeds of which Debentures were applied to costs of construction of Northern California Extension.
March 28, 1932	March 28, 1935	347,000	To refund \$347,000 of Debentures hereinafter mentioned, the proceeds of which Debentures were applied to costs of construction of Northern California Extension.
May 31, 1932	May 31, 1935	148,800	To refund \$148,800 of Debentures hereinafter mentioned, the proceeds of which Debentures were applied to costs of construction of Northern California Extension.
TOTAL		\$ 4,999,800	

I.C.C. Exhibits Nos. 9-3(a), 9-3(b) and 9-3(c) are true copies of said respective notes.

55. The dates of the Notes held by Reconstruction Finance Corporation, the dates of maturity thereof, the amount thereof and the disposition of the proceeds thereof are as follows: [991]

Date of Note	Maturity Date	Amount	Disposition of Proceeds
March 1, 1932	March 1, 1935	\$799,000*	<p>\$375,000 principal installment . . . Equipment Trust Certificates, Series B, due March 1, 1932.</p> <p>\$259,000 applied to costs of construction Northern California Extension.</p> <p>\$165,000 advances to subsidiary railroad companies to meet obligations due March 1, 1932.</p>
June 29, 1932	June 29, 1935	\$734,584	<p>\$14,947 interest due July 7, 1932, on Baldwin Locomotive Works contract.</p> <p>\$60,637 quarterly interest due July 1, 1932, on Notes to A. C. James Co.</p> <p>\$268,061 applied to costs of construction of Northern California Extension.</p> <p>\$70,846 miscellaneous capital expenditures.</p> <p>\$31,466 principal due July 7, 1932, on Baldwin Locomotive Works contract.</p> <p>\$264,027 miscellaneous materials and supplies including fuel oil.</p> <p>\$24,600 advances to subsidiary railroad companies.</p>

*Reduced to \$699,000 through the redemption at par of \$100,000 First Mortgage 5% Bonds of Tidewater Southern Railway Company pledged with Reconstruction Finance Corporation as collateral. [992]

Date of Note	Maturity Date	Amount	Disposition of Proceeds
Aug. 1, 1932	Aug. 1, 1935	\$ 136,045	\$103,698 payment of first instalment of California gross earnings tax. \$32,347 applied to costs of construction of Northern California Extension.
Aug. 30, 1932	Aug. 30, 1935	\$1,293,440	\$1,232,252.50 semi-annual interest due Sept. 1, 1932, on First Mortgage Bonds. \$61,187.50 semi-annual interest due Sept. 1, 1932, on equipment Trust Certificates, Series B.
Mar. 25, 1933	Mar. 25, 1936	99,931	\$39,294 semi-annual interest due on Equipment Trust Certificates, Series C. \$60,637 quarterly interest due on Notes to A. C. James Co.
Total (less \$100,000 payment; see footnote page 32		\$2,963,000	

I.C.C. Exhibits Nos. 9-1(a), 9-1(b), 9-1(c), 9-1(d) and 9-1(e) are true copies of said respective notes.

56. The dates of the Notes held by The Railroad Credit Corporation, the dates of maturity thereof, the amounts thereof and the disposition of the proceeds thereof are as follows: [993]

Date of Note	Maturity	Amount	Disposition of Proceeds
June 29, 1932	Feb. 28, 1934	\$1,303,000.00*	\$1,231,500 semi-annual interest due Mar. 1, 1932 on First Mortgage Bonds. \$71,500 semi-annual interest due Mar. 1, 1932, on Equipment Trust Certificates, Series B.
Mar. 25, 1933	March 24, 1935	\$1,293,439.00	\$1,232,252 semi-annual interest due Mar. 1, 1933, on First Mortgage Bonds. \$61,187 semi-annual interest due Mar. 1, 1933, on Equipment Trust Certificates, Series B.

Total at December 31, 1938

(Less credits under the
Marshalling and Distributing Plan; see footnote)

\$2,445,609.88

I.C.C. Exhibits Nos. 9-2(a) and 9-2(b) are true copies of said respective notes. Annexed hereto and made a part hereof, marked Exhibit B, is a statement of the Debtor's account under the Marshalling and Distributing Plan, 1931, showing credits in the amount of \$150,829.12. Said Exhibit also sets forth

*Reduced by \$150,829.12 of distributions under the Marshalling and Distributing Plan and other collateral income and proceeds (see Exhibit B hereto).

the undistributed balance of the Debtor and its subsidiaries in the Marshalling and Distributing Plan, 1931, as shown by the Books of the Railroad Credit Corporation. [994]

57. On October 4, 1929, the Interstate Commerce Commission, pursuant to Section 19(a) of the Interstate Commerce Act (49 U.S.C.A. 19 (a)), found the final valuation of the properties of the Debtor to be \$63,321,000 as of June 30, 1914. (I.C.C. Exhibit No. 104; 29 I.C.C. Val. Rep. 239)

58. In other proceedings (46 I.C.C. Val. Rep. 586; 46 I.C.C. Val. Rep. 540; 43 I.C.C. Val. Rep. 40) the Interstate Commerce Commission, pursuant to Section 19(a) of the Interstate Commerce Act (49 U.S.C.A. 19(a)), found the final valuation of the properties of the Debtor's wholly owned subsidiaries, Sacramento Northern Railway, Tidewater Southern Railway Company and Deep Creek Railroad Company, to be \$18,123,283 as of their respective valuation dates (230 I.C.C. Val. Rep. 61, at page 76) i.e., December 31, 1927 with respect to the Tidewater Southern Railroad Company and the Deep Creek Railroad Company, and December 31, 1928 with respect to Sacramento Northern Railway.

59. On October 10, 1938, the Interstate Commerce Commission, in its report in the instant proceeding, stated that

“If there be added to the above amounts i.e., the valuations of the properties of the Western Pacific Railroad Company and its wholly owned subsidiaries) the net costs of

additions and retirements between valuation dates and December 31, 1935, the total would be \$139,600,455." (230 I.C.C. 67, at p. 76)

60. On August 2, 1937, the Bureau of Finance of the Interstate Commerce Commission, in the instant proceeding (Proposed Report of the Bureau of Finance, pp. 22 and 23), stated that the final valuation of the properties of the Debtor, as determined by the Interstate Commerce Commission [995] pursuant to the provisions of Section 19(a) of the Interstate Commerce Act (49 U.S.C.A. 19(a) as of June 30, 1914, was \$63,321,000, and that in similar proceedings the Commission found the value under said Section 19(a) of the properties of the wholly owned subsidiaries of the Debtor, i.e., Sacramento Northern Railway, Tidewater Southern Railway Company and Deep Creek Railroad Company, to be \$18,336,529 as of their respective valuation dates, and that

"If there be added to the above amounts capital expenditures between valuation dates and December 31, 1935, the total would be \$144,619,851." (Proposed Report of Bureau of Finance, pp. 22 and 23.)

61. On August 2, 1937, the Bureau of Finance of the Interstate Commerce Commission, in the instant proceeding (Proposed Report of Bureau of Finance, p. 44), stated:

"The debtor's assets, consisting of real and personal property, have been described and its

investment in such property has been stated" i.e. \$144,619,851. (Proposed Report of Bureau of Finance, p. 23.)

Which includes values of wholly owned subsidiaries of the Debtor—Sacramento Northern Railway, Tidewater Southern Railway Company and Deep Creek Railroad Company as mentioned in previous paragraph No. 60.

62. On August 2, 1937, the Bureau of Finance of the Interstate Commerce Commission, in the instant proceeding, stated the book value of the assets of the Debtor to be \$171,096,992.80 as of November 30, 1936. (Proposed Report of Bureau of Finance, p. 6.)

63. On October 10, 1938, the Interstate Commerce Commission stated that the balance sheet as of June 30, 1938, of the Debtor's Trustees showed total assets of \$173,650,980.19 (Commission's Report in this proceeding, p. 8.)

64. On February 27, 1932, the Interstate Commerce Commission, in its report authorizing the issuance of \$15,000,000 in principal amount of general and refunding mortgage gold bonds, Series A, of the Debtor (180 I.C.C. 652; I.C.C. Exhibit No. 92, p. 4) found that the total capital [996] assets of the Debtor and affiliated companies, as of December 31, 1931, was \$147,056,283.31.

65. On December 9, 1932, the Interstate Commerce Commission, in its report authorizing the issuance of \$4,000,000 in principal amount of general and refunding mortgage gold bonds, Series B,

of the Debtor, found the "total capital assets (to be) \$148,796,047.60" as of May 31, 1932 (189 I.C.C. 207; I.C.C. Exhibit No. 92).

66. On November 10, 1938, the Interstate Commerce Commission in its reports authorizing the borrowing of \$10,000,000.00 by the Debtor's Trustees to be evidenced by Trustees Certificates stated:

"The general balance sheet of August 31, 1938, of the Debtor and Trustees combined shows assets in the amount of \$174,936,239.***" (228 I. C. C. 632).

67. On November 21, 1939, the Interstate Commerce Commission in its supplemental report authorizing an extension of payment of Trustees Certificates in the amount of \$10,000,000, stated that the general balance sheet of the Debtor of August 31, 1939 "shows assets as follows*** a total of \$175,263,531." (Corrected report Interstate Commerce Commission, Finance Docket No. 12213).

68. The valuation of the property of the Debtor and its subsidiaries (excluding Deep Creek Railroad Company, which was abandoned in 1939), as found by the Interstate Commerce Commission under Section 19 (a) of the Interstate Commerce Act (49 U. S. C. A. 19 (a)), with additions and betterments, new lines and extensions, subsequent to date of valuation, plus non-operating properties, (all as shown by the books of the Debtor's Trustees) is as follows as of December 31, 1938: [997]

The Western Pacific Railroad Company:

I. C. C. Valuation as of June 30, 1914,
with additions and betterments, new
lines and extensions, and non-operating
property to December 31, 1938..... \$129,589,367.77

Sacramento Northern Railway, including San Francisco and Sacramento Railroad Co.:

I. C. C. valuation as of December 31,
1928, with additions and betterments,
new lines and extensions and non-
operating property to December 31,
1938..... 19,657,709.38

Tidewater Southern Railway Company:

I. C. C. valuation as of December 31,
1927, with additions and betterments,
new lines and extensions, and non-
operating property to December 31,
1938..... 1,660,546.34

Total Western Pacific System—

December 31, 1938..... \$150,907,623.49

69. The total assets of the Debtor as shown upon its balance sheet, prepared in accordance with the accounting rules of the Interstate Commerce Commission, was \$166,960,037.15 as of December 31, 1935. (I. C. C. Exhibit No. 10).

70. The investment made by the Debtor between June 30, 1914 (the date of its final valuation by the Interstate Commerce Commission under 19 (a) and December 31, 1935, was \$77,609,391 (I. C. C. Exhibit No. 12) and if said investment is added to the said final valuation the resulting total investment is \$140,930,391 as of December 31, 1935.

71. The investment in road and equipment of the Debtor and its subsidiaries (excluding Deep Creek

Railroad Company) less accrued equipment depreciation, that is, system book value less depreciation, as of [998] December 31, 1938, is as follows:

The Western Pacific Railroad Company:

Total investment in road and equipment	\$143,937,425	
Less accrued depreciation—equipment	11,084,691	\$132,852,734

Sacramento Northern Railway:

Total investment in road and equipment	9,830,709	
Less accrued depreciation—equipment	535,737	9,294,972

Tidewater Southern Railway Company:

Total investment in road and equipment	2,874,387	
Less accrued depreciation—equipment	43,534	2,830,853

Total System investment in road and equipment (book value) less equipment depreciation	\$144,978,559
--	---------------

72. Annexed hereto as Exhibit C is a statement of the charges for maintenance during the years 1927 to 1938, inclusive, showing the amounts charged for ordinary operating expenses and for improvement or rehabilitation program expenses.

73. As the result of the 1936-1938 rehabilitation program, there is no deferred maintenance in the Debtor's properties. Its facilities and equipment are sufficient to handle expeditiously and efficiently all traffic reasonably to be anticipated in the immediate future. [999]

74. The reported Railway Operating Revenues of the Debtor's system for the years 1922-1938, inclusive, and the first nine months of 1939, classified as between freight passenger and other revenues, respectively, are:

Year	Freight	Passenger	Other	Total
1922	\$ 9,667,960	\$2,184,093	\$ 884,511	\$12,736,564
1923	10,751,276	2,455,420	1,208,116	14,414,812
1924	11,241,579	2,106,656	1,331,078	14,669,313
1925	12,634,074	2,900,817	1,263,657	15,898,548
1926	14,259,651	2,319,151	1,372,666	17,951,468
1927	14,764,690	2,090,480	1,451,505	18,306,675
1928	15,974,137	1,870,790	1,576,924	19,421,851
1929	16,358,041	2,187,700	1,550,816	20,096,557
1930	15,450,051	1,795,834	1,573,177	18,819,062
1931	12,342,041	1,315,283	1,195,614	14,852,938
1932	10,662,430	764,977	823,664	12,251,071
1933	10,950,948	595,268	656,273	12,202,489
1934	12,338,085	629,720	811,433	13,779,238
1935	13,254,572	730,957	421,929	14,407,458
1936	15,264,675	805,673	476,996	16,547,344
1937	16,588,843	814,632	515,010	17,918,485
1938	14,934,497	680,382	442,572	16,057,451
1939	11,684,495	794,633	357,857	12,836,985

(First 9 months)

75. The reported consolidated earnings available for interest of the Debtor and its subsidiaries for the years 1922-1938, inclusive, and the first ten months of 1939, are as follows: [1000]

1922	\$2,306,124
1923	3,313,976
1924	3,144,124
1925	4,454,352
1926	4,759,282
1927	2,674,494
1928	2,964,379

1929	2,529,846
1930	1,552,487
1931	186,708 (D)
1932	252,706
1933	674,007
1934	1,084,244
1935	805,589
1936	181,102
1937	903,113 (D)
1938	1,243,916 (D)
1939 (first 10 months)	

(D) means deficit.

76. If the reported consolidated earnings available for interest for the years 1922-1938, inclusive, and the first ten months of 1939 be adjusted to take into account (a) rehabilitation expenditures in the years 1927-1931 and 1934-1938, (b) amortization of discount on First Mortgage Bonds of the Debtor in the years 1922-1938, and (c) deductions and credits in the years 1931-1934 made by the Commission to accord with its Accounting Rules and Regulations, such earnings would have been: [1001]

1922	\$2,404,890
1923	4,412,234
1924	3,241,823
1925	4,557,798
1926	4,868,390
1927	3,470,861
1928	4,376,972
1929	3,718,436
1930	2,381,529
1931	220,494 (D)
1932	283,912
1933	474,365
1934	1,396,353
1935	1,377,026
1936	1,901,423

1937	1,077,407
1938	225,431
1939 (first ten months)	

(D) means deficit.

77. On July 14, 1916, the Debtor executed and delivered to First Federal Trust Company and Henry E. Cooper, as Trustees, its First Mortgage dated June 26, 1916, providing for an issue of First Mortgage Gold Bonds of the Debtor limited to \$50,000,000 in aggregate principal amount at any one time outstanding. Crocker First National Bank of San Francisco and Samuel Armstrong are now the Trustees under the First Mortgage.

78. The First Mortgage was recorded in the following counties in the States of California, Nevada and Utah on the following dates:

CALIFORNIA

County	Date
San Francisco	July 17, 1916
Alameda	July 17, 1916
San Joaquin	July 17, 1916
Sacramento	July 17, 1916
Sutter	July 17, 1916
Yuba	July 17, 1916
Butte	July 17, 1916
Plumas	July 17, 1916
Lassen	July 17, 1916
Sierra	Dec. 7, 1916
Santa Clara	Nov. 13, 1917

[1002]

NEVADA

Washoe	July 17, 1916
Humboldt	July 18, 1916
Lander	July 24, 1916

County	Date
Eureka	July 18, 1916
Elko	July 17, 1916
Pershing (created from Humboldt)	

UTAH

Tooele	July 18, 1916
Salt Lake	July 18, 1916
Rox Elder	July 19, 1916

79. The granting clauses of said First Mortgage are annexed hereto marked Exhibit D.

80. On February 29, 1932, the Debtor executed and delivered to The Chase National Bank of the City of New York, as Trustee, its General and Refunding Mortgage dated as of January 1, 1932, providing for an issue of General and Refunding Mortgage Gold Bonds of the Debtor limited to \$100,000,000 in aggregate principal amount at any one time outstanding. Irving Trust Company is now the Trustee under the Refunding Mortgage.

81. The Refunding Mortgage was recorded in the following counties in the States of California, Nevada and Utah on the following dates: [1003]

CALIFORNIA

County	Date
Alameda	March 15, 1932
Butte	March 17, 1932
Lassen	March 14, 1932
Plumas	March 12, 1932
Sacramento	March 15, 1932
San Francisco	March 12, 1932
San Joaquin	March 15, 1932
Santa Clara	March 15, 1932

County	Date
Sierra	March 15, 1932
Siskiyou	March 15, 1932
Sutter	March 12, 1932
Modoc	March 14, 1932
Yuba	March 14, 1932

NEVADA

Eureka	March 12, 1932
Humboldt	March 18, 1932
Lander	March 12, 1932
Pershing	March 12, 1932
Washoe	March 12, 1932
Elko	March 12, 1932

UTAH

Salt Lake	March 19, 1932
Tooele	April 12, 1932
Box Elder	March 18, 1932

82. The granting clauses of the Refunding Mortgage are annexed hereto, marked Exhibit E.

83. At the date of the execution of the Refunding Mortgage and at the date of the institution of this proceeding equipment trust obligations of the Debtor were outstanding under the following equipment trusts:

1. Lease and Agreement dated March 1, 1923 (I. C. C. Exhibit No. 108) under which The Chase National Bank of the City of New York was the trustee under which \$5,600,000 principal amount of 5½% Equipment Trust Certificates, Series B, were originally issued, maturing serially in instalments of \$375,000 each on March 1 of each [1004] year beginning

March 1, 1924, and ending March 1, 1937, with a final instalment of \$350,000 maturing March 1, 1938.

2. Lease and Agreement dated March 15, 1924, under which The Chase National Bank of the City of New York was the trustee, under which \$3,105,000 principal amount of 5½% Equipment Trust Certificates, Series C, were originally issued, maturing serially in instalments of \$207,000 each on December 1 of each year beginning December 1, 1924, and ending December 1, 1938.

3. Lease and Agreement dated May 1, 1929, under which The Chase National Bank of the City of New York is the trustee, under which \$1,095,000 principal amount of 5% Equipment Trust Certificates, Series D, were originally issued, maturing serially in instalments of \$73,000 on November 1 of each year beginning November 1, 1929, and ending November 1, 1943.

4. Lease of Locomotives dated June 5, 1931, from The Baldwin Locomotive Works to the Debtor (J. C. C. Exhibit No. 109—hereinafter called the "Baldwin Lease") providing for a payment by the Debtor of \$11,606.43 for each locomotive upon the delivery of two of the leased locomotives, a payment of \$11,678.14 for each locomotive upon the delivery of four of the leased locomotives, and semi-annual payments over a period of ten years, dating from

the average weighted delivery dates of all the leased locomotives, in the following amounts:

[1005]

\$47,199.75	at the end of	6 months
46,413.08	" " " "	12 "
45,626.43	" " " "	18 "
44,839.76	" " " "	24 "
44,053.10	" " " "	30 "
43,266.43	" " " "	36 "
42,479.78	" " " "	42 "
41,693.11	" " " "	48 "
40,906.45	" " " "	54 "
40,119.78	" " " "	60 "
39,333.13	" " " "	66 "
38,546.46	" " " "	72 "
37,759.80	" " " "	78 "
36,973.13	" " " "	84 "
36,186.48	" " " "	90 "
35,399.81	" " " "	96 "
34,613.15	" " " "	102 "
33,826.49	" " " "	108 "
33,039.83	" " " "	114 "
32,253.16	" " " "	120 "

84. The Lease and Agreement dated March 1, 1923 (I. C. C. Exhibit No. 108), the Lease and Agreement dated March 15, 1924, and the Lease and Agreement dated May 1, 1929, were each in the usual Philadelphia Plan forms and provided that the equipment was let and leased to the Debtor but that title thereto was vested in the respective trustees thereunder. Each provided for the payment to the Trustee thereunder of cash equal to the difference between the cost of the equipment delivered and the principal amount of Equipment Trust Certificates issuable in respect of such equipment.

85. The average weighted delivery dates of the locomotives covered by the Baldwin Lease are set forth in I. C. C. Exhibit No. 110.

86. The equipment originally subject to said equipment trusts, and the estimated cost thereof, as set forth in the respective instruments of lease, are as follows: [1006]

(1) Lease Dated March 1, 1923

- 6 Heavy Mikado Locomotives, lettered W. P. and numbered ~~316~~ to 321 both inclusive.
- 2,000 Steel Underframe Refrigerator Cars, 146 thereof lettered W.R.L. and numbered 7001 to 7146 both inclusive (to be re-lettered P. F. E. and re-numbered 50,001 to 50,146 both inclusive); 1,854 thereof to be lettered P. F. E. and numbered 50,147 to 52,000 both inclusive;
- 100 Logging Cars, lettered W. P. and numbered 2601 to 2700, both inclusive;
- 100 Steel Underframe Automobile Cars lettered W. P. and numbered 14,001 to 14,100 both inclusive;
- 20 Steel Baggage Cars lettered W. P. and numbered 101 to 120 both inclusive;
- 20 Steel Passenger Coaches lettered W. P. and numbered 301 to 320 both inclusive;
- 8 Steel Dining Cars named and marked "California", "San Francisco", "Oakland", "Stockton", "Sacramento", "Pacific", "Humboldt" and "Nevada."

Estimated cost—\$6,996,000.

(2) Lease Dated March 15, 1924.

- 5 Heavy Mikado Locomotives, lettered W. P. and numbered 322 to 326 both inclusive;
- 5 Mallet Locomotives, lettered W. P. and numbered 206 to 210 both inclusive;
- 775 Steel Underframe Refrigerator Cars, lettered P. F. E. and numbered 52001 to 52775 both inclusive;
- 100 Logging Cars, lettered W. P. and numbered 2701 to 2800 both inclusive;
- 200 Steel Underframe Automobile Cars lettered W. P. and numbered 14101 to 14300 both inclusive;
- 1 Jordan Spreader, equipped with composite ditching and spreading wings, lettered W. P. and numbered 9.

Estimated cost—\$3,881,250.

(3) Lease Dated May 1, 1929

- 5 Heavy Mikado Locomotives, lettered W. P. and numbered 332 to 336 both inclusive;
- 50 Fifty-foot Flat Cars, lettered W. P. and numbered 2301 to 2350 both inclusive;
- [1007]
- 50 Steel Tank Cars, lettered W. P. and numbered 1201 to 1250 both inclusive;
- 150 Automobile Cars with steel ends, lettered W. P. and numbered 12,001 to 12,150 both inclusive; and
- 100 Automobile Cars with end doors one end and steel end other end, lettered W. P. and numbered 13,001 to 13,100 both inclusive.

Estimated cost—\$1,369,827.30.

(4) Baldwin Lease

Six 2-8-8-2 type simple articulated steam locomotives with separate tenders, Lessor's classification 20 46/46 1/4 EE 1 to 6, Lessee's Road Numbers 251 to 256, built as Lessor's specification 31 D 40, including modifications subsequently agreed upon.

The lease does not contain a statement as to the estimated cost.

87. In 1933 and thereafter in each year the Debtor furnished to the Refunding Mortgage Trustee, pursuant to the requirements of Section 16 of Article Five of the Refunding Mortgage, a statement purporting to be a statement of the equipment upon which the Refunding Mortgage was a lien. These statements set forth in paragraph (1) a list of equipment stated to be "not covered by any form of Equipment Trust". Paragraphs (2) to (5) of said statements contain a list of the equipment subject to the four leases last above mentioned.

88. The total principal amount of the equipment trust obligations outstanding under the above-mentioned equipment trusts as of December 31, 1935, was \$2,682,598. The initial payments and all subsequent payments under the above-mentioned equipment trusts were made out of free funds or out of proceeds of loans evidenced by notes which are secured by pledge of [1008] Refunding Mortgage Bonds. No part of the cost of said equipment was financed with proceeds of First Mortgage Bonds

or cash deposited under the First Mortgage. Additional payments under said equipment trusts have been made by the Trustees of the Debtor since December 31, 1935, and since that date the Agreement dated March 1, 1923, and the Agreement dated March 15, 1924, have been satisfied.

89. The aggregate ledger value of the equipment subject to the above-mentioned equipment trusts, the accrued depreciation thereon, the depreciated ledger value, the principal amount of outstanding obligations and the book value of the equity therein as of December 31, 1935 (the nearest date to August 2, 1935, for which computations are available) are as follows:

Ledger value	\$12,933,666.13
Accrued depreciation	4,087,229.69
Depreciated ledger value	8,846,436.44
Outstanding obligations	2,682,598.00
Value of equity in said equipment	\$ 6,163,838.44

90. [Eliminated by agreement of the parties.]

91. The Debtor's applications dated September 30, [1909] 1930, and December 21, 1931, submitted to the New York Stock Exchange in connection with issues of First Mortgage Bonds contain an enumeration of items of equipment on which the applications state the First Mortgage constitutes a first lien. This is followed by a statement that "The foregoing equipment does not include additional unmortgaged equipment covered by Equipment Trust Agreements, Series 'B', Series 'C', and Series 'D', as follows:", the statements quoted be-

ing followed by an enumeration of certain items of equipment.

92. All of the equipment subject to the above-mentioned equipment trusts was acquired for use on all of the Debtor's lines of railroad, including those specifically described in the granting clauses of the First Mortgage and was in fact so used.

93. A schedule is being prepared showing:

(1) the number (classified as to types of equipment) of units of equipment owned by the Debtor at the date of the execution and delivery of the First Mortgage and the depreciated book value of such equipment as of that date;

(2) the number (similarly classified as to types of equipment) of units of equipment acquired by the Debtor since the date of the execution and delivery of the First Mortgage which were made the basis of the authentication and delivery of First Mortgage Bonds of the withdrawal of deposited cash (including equipment acquired under equipment trusts as to which First Mortgage Bonds or deposited cash were used to refund outstanding equipment trust certificates), and the book value of such equipment at the date of acquisition; and

(3) the following data, as of (March 1, 1923, (b) March 15, 1924, (c) May 1, 1929, (d) August 1, 1931, (e) the date of the execution and delivery of the Refunding Mortgage, (f) the date of the institution of this proceeding, and (g) January 1, 1939:

(a) The number (classified as above) of [1010] units of equipment referred to in paragraph 1 above which had been destroyed, dismantled or otherwise disposed of;

(b) The number (classified as above) of units of equipment referred to in paragraph 2 above which had been destroyed, dismantled or otherwise disposed of; and

(c) The number (classified as above) of units of equipment acquired subsequent to the date of the execution and delivery of the First Mortgage by the use of free funds or under equipment trusts and not financed with First Mortgage Bonds or deposited cash, and the book value of such equipment at the time of acquisition.

When said schedule has been identified by signature of counsel for the Debtor's Trustees, for the First Mortgage Trustees, and for the Refunding Mortgage Trustee, it may be filed with the Court and when so filed shall constitute a part of this stipulation as Exhibit G. [1011]

94. The Northern California Extension connects with the main line of the Debtor at Keddie, Plumas County, California, and extends to a connection with the Great Northern Railroad at Bieber, Lassen County, California, a distance of approximately 112 miles. It is situate entirely within the counties of Plumas and Lassen, California.

95. The original Certificate of Incorporation of the Debtor contains no specific description of or

specific reference to the Northern California Extension. On June 17, 1929, an amendment to the Certificate of Incorporation was filed which included a specific description of the Northern California Extension.

96. Construction of the Northern California Extension was commenced on August 16, 1930, and by December 31, 1930, there had been completed 32% of the grading, 16% of the tunneling, practically all of the clearing, and a large percentage of the culvert installation; construction of concrete bridge foundations was largely under way. Connection with the Great Northern Railway at Bieber was made on November 10, 1931, and freight service was then inaugurated under the jurisdiction of the construction department. Owing to the approach of the winter season, complete ballasting of the line, as well as the completion of certain other facilities was deferred until 1932. Ballasting was practically completed in 1932, and on June 1, 1932, the line was placed in full commercial operation for freight service.

97. No supplemental indenture was ever executed in terms subjecting to the lien of the First Mortgage the Northern California Extension or any part thereof. [1012]

98. The Northern California Extension has been a substantial contributor of traffic to the Debtor since its completion. Gross revenues received by the Debtor from freight originated and terminated on, and passing over the Northern California Extension

sion as a bridge line, from 1932 to 1938, inclusive, and for the first 9 months of 1939, were as follows:

1932	\$1,098,016
1933	1,491,466
1934	2,119,427
1935	2,289,858
1936	3,151,734
1937	3,425,601
1938	3,993,674
1939 (first 9 months)	2,463,489

99. The cost of construction of the Northern California Extension to May 31, 1932, was \$10,183,641.90. The cost of construction was financed (1) by the sale at 97½ to The Western Pacific Railroad Corporation of \$5,000,000 principal amount of First Mortgage Bonds, (2) by the sale at par to the A. C. James Company of \$5,000,000 principal amount of Debentures issued under an Indenture dated July 1, 1930, executed and delivered by the Debtor to The Chase National Bank of the City of New York, as Trustee, which were in turn refunded by notes secured by the pledge of Refunding Mortgage Bonds, and (3) by loans obtained by the Debtor from the Reconstruction Finance Corporation aggregating \$559,408, evidenced by notes secured by the pledge of Refunding Mortgage Bonds. [1013]

100. Under date of May 14, 1929, while the original application of the Debtor to the Interstate Commerce Commission for a certificate of public convenience and necessity for the construction of the Northern California Extension was still pending before the Commission, the A. C. James Com-

pany wrote a letter to the Debtor of which I. C. C. Exhibit No. 45 is a true copy.

101. This financing was not carried out on the basis outlined in I. C. C. Exhibit 45, but, under date of June 19, 1929, the A. C. James Company wrote another letter to the Debtor of which I. C. C. Exhibit No. 46 is a true copy.

102. The Executive Committee of the Debtor at a meeting held June 19, 1929, adopted certain resolutions, true copies of which are set forth in Exhibit VII to I. C. C. Exhibit No. 80, Mr. A. C. James being present but not voting.

103. The issue of \$5,000,000 principal amount of First Mortgage Bonds to finance in part the construction of the Northern California Extension was authorized by the Interstate Commerce Commission in an order entered October 6, 1930, of which I. C. C. Exhibit No. 51 is a true copy, pursuant to an application of the Debtor dated September 9, 1930, of which I. C. C. Exhibit No. 81 is a true copy.

104. The bonds were offered from time to time at public sale to the highest bidder in blocks of \$1,000,000 principal amount or less, all of them being purchased by The Western Pacific Railroad Corporation at 97½% and accrued interest. The notice, dated January 8, 1931, of which I. C. C. Exhibit No. 93, sheet 1, is a true copy, calling for bids on the first block of \$1,000,000 principal amount, referred to the specifications, form of proposals and form of contract on file with the Debtor, [1014] of which I. C. C. Exhibit No. 93, sheet 2, is a true

copy. The notices, specifications and bids in connection with the sale of the remainder of the bonds were substantially identical with those contained in I. C. C. Exhibit No. 93.

105. Mr. A. C. James was then a director of The Western Pacific Railroad Corporation.

106. The bonds were authenticated and delivered by the First Mortgage Trustees pursuant to paragraph B of Section 2 of Article Second of the First Mortgage, which provides for the authentication and delivery of bonds against the deposit with the Trustees of the cash proceeds of their sale. The dates of authentication and delivery, the principal amounts of bonds authenticated and delivered, the amounts of cash proceeds deposited, and the numbers of the I. C. C. Exhibits containing true copies of the application papers furnished to the First Mortgage Trustees, are as follows:

Date	Principal Amount of Bonds	Amount of Cash Proceeds	I. C. C. Exhibit No.
Feb. 11, 1931	\$1,000,000	\$975,000	61
June 25, 1931	1,000,000	975,000	63
July 23, 1931	900,000	877,500	65
Nov. 25, 1931	750,000	731,250	68
Jan. 8, 1932	350,000	341,250	70
Jan. 29, 1932	1,000,000	975,000	72

107. The deposited cash was withdrawn by the Debtor on requisitions filed with the First Mortgage Trustees, pursuant to Section 2 of Article Second of the First Mortgage, to reimburse the Debtor for expenditures made in the construction of the Northern California Extension, the expenditures certi-

fied being equal to the principal amount of the bonds represented by the deposited cash, as required by the provisions of the First Mortgage. The expenditures so certified did [1015] not constitute the entire amount of expenditures on the Northern California Extension.

108. The resolutions authorizing the withdrawal of the deposited cash were adopted by the Executive Committee of the Debtor at its meetings held on February 11, June 25, July 23, October 15, November 17, and December 21, 1931, and January 29, 1932. I. C. C. Exhibit No. 86 is a true copy of said resolutions. Mr. A. C. James was present at each of those meetings.

109. The dates and amounts of the withdrawals of deposited cash, and the numbers of the requisitions and the I. C. C. exhibit numbers of true copies of the requisition papers are as follows:

Requisition No.	Date	Amount	I. C. C. Exhibit No.
244	Feb. 11, 1931	\$975,000.00	62
246	June 25, 1931	975,000.00	64
247	July 23, 1931	812,571.03	66
248	Oct. 24, 1931	64,928.97	67
250	Nov. 25, 1931	731,250.00	69
251	Jan. 8, 1932	341,250.00	71
252	Jan. 29, 1932	975,000.00	73

110. The amounts and dates of the expenditures and the itemization of the expenditures, as set forth in the officers' certificates contained in these requisitions, are as follows:

1082

A. C. James Co. et al. vs.

Req. No. 244 Amount \$999,998.98 Date Feb. 1, 1929 to
November 30, 1930

Engineering	\$244,777.82
Land for Transportation Purposes	121,377.67
Grading	589,393.37
Tunnels and Subways	44,450.12
Total Expenditure	\$999,998.98

Req. No. 246 Amount \$1,000,000.00 Date January 1, 1931
to April 30, 1931.

Engineering	\$ 25,001.21
Land for Transportation Purposes	16,965.14
Grading	358,532.33
Tunnels and Subways	298,589.02
	[1016]
Bridges, Trestles and Culverts	\$ 286,163.05
Ties	2,014.38
Rails	3,021.57
Track Laying and Surfacing	130.00
Right of Way Fences	3,198.56
Crossings and Signs	3,040.97
Station and Office Buildings	990.26
Water Stations	717.55
Other Expenditures—Road	1,635.96
Total Expenditure	\$1,000,000.00

Req. No. 247 Amount \$833,406.18 Date May 1, 1931 to
June 30, 1931

Engineering	\$ 27,108.10
Land for Transportation Purposes	58,732.92
Grading	346,349.05
Tunnels and Subways	67,990.50
Bridges, Trestles and Culverts	157,575.37
Ties	31,861.33
Rails	58,146.84
Other Track Material	21,748.24
Ballast	349.51
Track Laying and Surfacing	22,993.58

Institutional Bondholders et al.

1083

Right-of-Way Fences	335.64
Crossings and Signs	3,213.59
Station and Office Buildings	216.72
Water Stations	7,532.40
Telegraph and Telephone Lines	14,461.63
Other Expenditures—Road	14,790.73

Total Expenditures \$833,406.18

Req. No. 248 Amount \$66,593.82 Date August 1, 1931 to
August 31, 1931

Bridges, Trestles and Culverts \$66,593.82

Req. No. 250 Amount \$750,000.00 Date August 1, 1931 to
September 30, 1931

Engineering	\$ 16,801.95
Grading	29,350.73
Tunnels and Subways	49,636.90
Bridges, Trestles and Culverts	140,588.13
Ties	103,826.07
Other Track Material	73,112.72
Ballast	191,428.53
Track Laying and Surfacing	139,660.60
Water Stations	5,594.37

\$750,000.00

Req. No. 251 Amount \$350,000.00 Date September 1, 1931
to October 31, 1931

Engineering	\$ 31,703.24
Tunnels and Subways	100,386.60
Bridges, Trestles and Culverts	217,910.16

\$350,000.00

[1017]

Req. No. 252 Amount \$1,000,000.00 Date June 1, 1931, to
Nov. 30, 1931

Grading \$1,000,000.00

111. The total amount spent from all sources for land for transportation purposes in connection with the Northern California Extension was \$504,590.66.

112. I. C. C. Exhibits Nos. 50, 47 and 80 are true copies, respectively of (a) the Indenture under which \$5,000,000, principal amount, of Debentures were issued by the Debtor in 1931 and 1932 for the purpose of providing a portion of the money required for the construction of the Northern California Extension, (b) the order of the Interstate Commerce Commission authorizing their issue, and (c) the application of the Debtor to the Commission for authority to issue and sell the same. I. C. C. Exhibits Nos. 48 (sheets 5 and 14) and 49 are true copies, respectively, of the Debtor's published notice of January 8, 1931, calling for bids for the purchase of said Debentures, the specifications referred to in said notice, and the bid of A. C. James Co. made pursuant to said notice.

113. Mr. A. C. James was the President and a director of the A. C. James Company throughout 1931 and 1932.

114. The Debentures were authenticated and delivered pursuant to Article II of the Indenture dated July 1, 1930.

115. Said \$5,000,000 of Debentures were sold to A. C. James Co. for cash at par. The dates on which the Debentures were authenticated and delivered and the respective principal amounts thereof are as follows: [1018]

Date	Amount
February 27, 1931.....	\$1,000,000
March 26, 1931.....	600,000
May 25, 1931.....	530,000
June 20, 1931.....	995,000
August 25, 1931.....	309,000
October 20, 1931.....	600,000
November 25, 1931.....	120,000
January 28, 1932.....	350,000
March 28, 1932.....	347,000
May 31, 1932.....	149,000

In each case the cash was drawn down on the date the Debentures were authenticated against certificates showing expenditures made or liabilities incurred in twice the amount of the cash drawn down.

116. On March 1, 1932, contemporaneously with the delivery of the Refunding Mortgage and the authentication and delivery of the initial issue of \$14,380,000, principal amount, of Refunding Mortgage Bonds, A. C. James Co. surrendered to the Trustee under the Indenture dated July 1, 1930, for cancellation \$4,504,000, principal amount of Debentures, being all of the Debentures then outstanding. These Debentures were surrendered for cancellation by A. C. James Co. in exchange for a note of the Debtor in the principal amount of \$4,504,000 secured by the pledge of \$5,630,000, principal amount, of Refunding Mortgage Bonds, Series A.

117. The \$347,000, principal amount, of Debentures authenticated and delivered on March 28, 1932, were simultaneously surrendered to the Trustee under the Indenture dated July 1, 1930, for cancellation, in exchange for the delivery to the A.

C. James Co. of a note of the Debtor in like principal amount secured by the pledge of \$433,500, principal amount, of Refunding Mortgage Bonds, Series A. A similar procedure was followed in the case of the \$149,000, [1019] principal amount, of Debentures authenticated and delivered on May 31, 1932, the principal amount of Refunding Mortgage Bonds, Series A, then pledged being \$186,000.

118. The aggregate principal amount of bonds authenticated and delivered under the Refunding Mortgage is \$18,999,500. The dates on which these bonds were authenticated and delivered to the Debtor and the respective principal amounts thereof are as follows:

Date	Amount
March 1, 1932	\$14,380,000
March 28, 1932	433,500
May 31, 1932	186,000
February 27, 1933	4,000,000

All of the bonds were bonds of Series A, except the \$4,000,000, principal amount authenticated and delivered on February 27, 1933, which were of Series B.

119. The issue by way of pledge of the Series A bonds was authorized by the Interstate Commerce Commission in an order entered February 27, 1932, of which I. C. C. Exhibit No. 53 is a true copy, pursuant to an application of the Debtor dated February 11, 1932, of which I. C. C. Exhibit No. 85 is a true copy. A total of \$15,000,000 principal amount, of bonds were authorized by said order. The issue by way of pledge of the \$4,000,000 of Series B

bonds was authorized by the Commission in an order entered December 9, 1932, and a supplemental order entered February 25, 1933, of which I. C. C. Exhibit No. 92 is a true copy, pursuant to an application of the Debtor dated August 1, 1932, of which I. C. C. Exhibit No. 90 is a true copy, and a supplemental application dated January 12, 1933, of which I. C. C. Exhibit No. 91 is a true copy. All of the bonds were pledged with [1020] A. C. James Co., the Reconstruction Finance Corporation, and The Railroad Credit Corporation.

120. The Series A bonds were authenticated and delivered to the Debtor pursuant to Section 1 of Article Two of the Refunding Mortgage, which provides for an initial issue of \$15,000,000, principal amount of bonds upon the furnishing by the Debtor to the Refunding Mortgage Trustee of a certified copy of resolutions of the Board of Directors of the Debtor requesting the authentication and delivery of the bonds, together with an opinion of counsel with respect to the due authorization of the issue of the bonds by any governmental bodies having jurisdiction.

121. The Series B bonds were authenticated and delivered to the Debtor pursuant to Sections 1 and 2 of Article Two of the Refunding Mortgage. Under Section 2, \$5,000,000, principal amount of Refunding Mortgage Bonds was required to be reserved for the purpose of refunding the \$5,000,000 of Debentures issued under the Indenture dated July 1, 1930, but it was provided that bonds re-

served under Section 2 for the purpose of refunding Debentures could be released from reservation by a resolution of the Board of Directors of the Debtor declaring them to be no longer needed for that purpose, in which event such reserved bonds might be authenticated and delivered in accordance with the provisions of either Section 1 or Section 3 of Article Two. The Board of Directors of the Debtor, at a meeting held on July 14, 1932, adopted resolutions declaring that the \$5,000,000 principal amount of Refunding Mortgage Bonds reserved under Section 2 for the purpose of refunding the \$5,000,000 principal amount of Debentures need no longer [1021] be held or reserved for that purpose, and the Series B bonds were accordingly authenticated and delivered in accordance with the provisions of Section 1 of Article Two. Exhibit II annexed to L.C.C. Exhibit No. 90 is a true copy of said resolutions.

122. The construction of the Northern California extension was financed in part with funds advanced by the Reconstruction Finance Corporation on the following dates and in the following amounts:

Date	Amount
March 1, 1932	\$259,000
June 29, 1932	268,061
August 1, 1932	32,347

These advances formed part of loans of larger amounts made by the Reconstruction Finance Corporation to the Debtor, which were secured by the

pledge of Refunding Mortgage Bonds and other collateral. These loans were authorized by the Interstate Commerce Commission in a certificate of approval issued February 29, 1932, of which I.C.C. Exhibit No. 52 is a true copy, a certificate of approval issued June 23, 1932, and an order entered February 25, 1933, of which I.C.C. Exhibit No. 60 is a true copy.

123. I.C.C. Exhibit No. 82 is a true copy of extracts from the Debtor's application of February 5, 1932, to Reconstruction Finance Corporation for a loan which included the first advance of \$259,000 by Reconstruction Finance Corporation on account of the Northern California Extension.

I.C.C. Exhibit No. 87 is a true copy of extracts from the Debtor's application of May 23, 1932, to Reconstruction Finance Corporation for the loans which included the remainder of the advances made for the construction of the [1022] Northern California Extension. I.C.C. Exhibit No. 52 is a true copy of the report and certificate dated February 29, 1932, of the Interstate Commerce Commission approving the making of a loan to the Debtor by Reconstruction Finance Corporation.

124. Between July 14 and December 31, 1916, the average mileage operated by the Debtor was 942.98 miles. At the date of the execution of the Refunding Mortgage there were 1099.20 miles of track operated by the Debtor, exclusive of the Northern California Extension.

125. The Debtor at the date of execution of the First Mortgage owned substantial amounts of real

estate. I.C.C. Exhibit No. 113 contains an itemized statement of physical property held by the Debtor as an investment at the close of the year 1934 and carried on its books in the account entitled "Miscellaneous Physical Property"; the aggregate amount thereof being \$3,854,072.54.

126. I.C.C. Exhibit No. 114 contains in more condensed form a statement of substantially the same property carried on the Debtor's books in the account entitled "Miscellaneous Physical Property", at the close of the year 1935. The aggregate amount at which this property was carried on the books of the Debtor at the close of the year 1935 was \$3,856,128. Of this latter amount \$1,643,114.13 represents cash outlays for additions and betterments, \$325,346.71 represents track material for lease transferred from stock of material on hand, \$256.80 represents donations, \$324,499.97 represents credits for property sold or abandoned, and \$2,211,910.32 represents adjustments. The latter amount represents items formerly included in Account 701 [1023] entitled "Investment in Road and Equipment", as follows: \$1,919,821.29, land for transportation purposes (representing principally acreage is Islais Creek, District of San Francisco acquired as sites for industrial plants); \$252,236.21, assessments for public improvements; \$27,453, shops and engine houses; \$9,733.20, station and office buildings; and \$2,666.62, engineering.

127. A schedule is being prepared showing an analysis of certain items appearing in Debtor's account entitled "Miscellaneous Physical Prop-

erty" at the close of the year 1935, which the Refunding Mortgage Trustee claims are not subject to the lien of the First Mortgage, together with certain facts respecting said items. When said schedule has been identified by signature of counsel for the Debtor's Trustees, for the First Mortgage Trustees, and for the Refunding Mortgage Trustee, it may be filed with the Court and when so filed shall constitute a part of this stipulation, as Exhibit H.

128. I.C.C. Exhibits Nos. 113 and 114 and said Exhibit H include items of property described as being for "non-carrier purposes". As shown by said exhibits certain of the items of property described as being "for non-carrier purposes" were transferred from the Account entitled "Investment in Road and Equipment".

129. The amount of cash of the Debtor on hand as of July 31, 1935, was \$949,803.31, of which \$38,120.89 represented interest paid by Tidewater Southern Railway Company to the Debtor after default on the notes secured by Refunding Mortgage Bonds. Receivables, as of said date, aggregated \$1,336,664.53. The amount of cash on hand as of [1024] November 13, 1935, the date of the qualification of the Trustees of the Debtor was \$1,327,456.46; and receivables totaled \$1,328,561.68. The amounts of cash and receivables as of January 1, 1939, were \$2,094,199.56 and \$1,136,968.06, respectively. The receivables mentioned in this paragraph exclude the receivables mentioned in paragraphs 30, 32, 33 and 34 of the stipulation.

130. In 1934, the holders of 86.58% in principal amount of the outstanding First Mortgage Bonds executed instruments by which such holders agreed to the extension to January 1, 1937, of the March 1, 1934, and September 1, 1934, interest installments on the First Mortgage Bonds held by them. The aggregate amount of the Interest installments so extended was \$2,133,800.

In connection with the extension of such interest installments, the Chairman of the Board of Reconstruction Finance Corporation addressed to the Debtor a letter dated June 23, 1934, of which I.C.C. Exhibit No. 117 is a true copy.

131. I.C.C. Exhibits Nos. 117 and 119 are true copies of letters received by the Debtor from A. C. James Co., The Railroad Credit Corporation and The Western Pacific Railroad Corporation in connection with the extension of interest falling due in 1934 on the First Mortgage Bonds.

132. Subsequent to the institution of this proceeding, the Trustees of the Debtor issued, pursuant to orders of the Court, their certificates of indebtedness in the aggregate principal amount of \$10,000,000 for the purpose of financing expenditures in connection with the Debtor's three-year rehabilitation program. Said certificates of indebtedness were refunded at their [1025] respective maturity dates by the issue of new certificates of indebtedness of equal principal amount, and the aggregate principal amount of such certificates of indebtedness now outstanding is \$10,000,000. All of said certificates of indebtedness are owned by

Reconstruction Finance Corporation and are secured by a lien prior to the respective liens of the First Mortgage and the Refunding Mortgage.

133. From time to time, pursuant to orders of the Court, funds representing the proceeds of various property of the Debtor have been deposited in escrow with Crocker First National Bank of San Francisco pending agreement or judicial determination as to which mortgage constituted the first lien thereon. As of January 1, 1939, Crocker First National Bank of San Francisco held \$165,314.26 of such funds, as follows:

\$ 93,202.00 representing the proceeds of property in the Islais Creek Region of San Francisco, containing approximately 186,404 square feet, sold to Federated Metals Corporation. (Order dated Sept. 23, 1937). Funds deposited October 23, 1937.

65,816.30 representing the proceeds of property in the Islais Creek Region of San Francisco, containing approximately 77,431 square feet, sold to Safeway Stores Incorporated. (Order dated Nov. 8, 1937). Funds deposited December 16, 1937.

350.00 representing the proceeds of a parcel of land in Plumas County, California, containing approximately $3\frac{1}{2}$ acres, sold to Keddies Resort Incorporated. (Order dated Feb. 7, 1938). Funds deposited May 4, 1938.

5,945.96 representing the proceeds of certain property in the City of Oakland, County of Alameda, California, sold to Heafey-Moore Company. (Order dated Feb. 7, 1938). Funds deposited June 6, 1938.

\$165,314.26

Under the same circumstances and conditions, funds amounting to \$38,745.62 have been deposited in escrow since January 1, 1939, as follows:

- \$ 7,200.00 representing the proceeds of 96 obsolete logging flat cars, sold to Fred E. Barnett Company. (Order dated March 8, 1939.) Funds deposited May 12, 1939.
- 2,749.92 representing the proceeds of 2 parcels of land in San Francisco, California, sold to San Francisco Housing Authority. (Order dated May 15, 1939.) Funds deposited July 17, 1939.
- 12,539.45 representing the proceeds of 6 parcels of land in San Francisco, California, sold to San Francisco Housing Authority. (Order dated May 15, 1939.) Funds deposited July 29, 1939.
- 16,256.25 representing the proceeds of 2 parcels of land in the City of Sacramento, California, sold to W. E. Hibbitt and Frances M. Hibbitt. (Order dated May 1, 1939.) Funds deposited November 27, 1939.

\$38,745.62

134. As of the close of business on December 16, 1939, cash held by Crocker First National Bank of San Francisco as Trustee under the First Mortgage amounted to \$317,934.91. As of January 1, 1939, said cash amounted to \$292,804.22.

135. At the date of the institution of the above entitled proceeding, the following collateral was physically pledged with the Refunding Mortgage Trustee:

4,653 shares of stock of Alameda Belt Line of par value of \$100 per share.

2,642-2/3 shares of preferred stock of Central California Traction Company of par value of \$100 per share.

965-2/3 shares of common stock of Central [1027] California Traction Company of par value of \$100 per share.

1,147,955 shares of common stock of Tidewater Southern Railway Company of par value of \$1 per share.

\$280,000 aggregate principal amount of Central California Traction Company First Mortgage 5% Bonds due April 1, 1936.

6% demand note of Deep Creek Railroad Company dated October 10, 1921, in principal amount of \$45,000.

Note of Standard Realty and Development Company in principal amount of \$251,273.07, dated March 22, 1932, payable one day after date, without interest.

5% note of Tidewater Southern Railway Company in principal amount of \$508,278.61; dated June 26, 1933, payable on or before March 1, 1945.

Deposited cash in amount of \$52,316.81.

136. As of January 1, 1939, the Refunding Mortgage Trustee held the same collateral except that \$10,000 principal amount of Central California Traction Company First Mortgage Bonds had been redeemed, reducing the principal amount thereof physically pledged with the Refunding Mortgage

Trustee to \$270,000. The deposited cash, which amounted to \$52,316.81 at the date of the institution of this proceeding, amounted to \$223,732.32 at the close of business on January 1, 1939, and to \$275,353.21 at the close of business on December 16, 1939.

137. It is not disputed that all of the collateral in the foregoing paragraphs 135 and 136 is subject to the Refunding Mortgage as a first lien, with the exception of the above described notes of Deep Creek Railroad Company and Standard Realty and Development Company, as to which the First Mortgage Trustees contend that the lien of the Refunding Mortgage is subordinate to the lien [1028] of the First Mortgage.

138. All of the stock (except directors' shares) of Standard Realty and Development Company and all of the stock of Deep Creek Railroad Company are physically pledged with the First Mortgage Trustees. Deposited cash was withdrawn under the First Mortgage on the basis of the acquisition by the Debtor of said stock of Deep Creek Railroad Company. [1029]

139. Tidewater Southern Railway Company owns and operates approximately 61.4 miles of main and branch line standard gauge railroad extending from Ortega, San Joaquin County, to Hilmar, Merced County, California. As of December 31, 1935, it owned three locomotives, two freight cars and one piece of work equipment. At December 31, 1935, it had 1,176,782 shares of capital stock out-

standing, par value \$1 per share. More than 97% of such capital stock is owned by the Debtor.

140. The Refunding Mortgage Trustee holds as pledgee a note of Tidewater Southern payable to the Debtor dated June 26, 1933 maturing March 1, 1945, in the amount of \$508,278.61, representing the unpaid advances made by the Debtor in each of the years 1927 to 1931, inclusive, totalling face amount of note and used for Additions and Betterments and Miscellaneous Physical Property. Interest at the rate of 5% per annum is currently paid on said note and deposited with the Trustee under the Refunding Mortgage.

141. In the years 1927 to 1933, inclusive, advances totaling \$638,200.00 were made by the Debtor to Tidewater Southern. \$508,278.61 of such advances were used for the acquisition or construction of Additions and Betterments and Miscellaneous Physical Property by Tidewater Southern in the years 1927 to 1931. \$129,921.39 of such advances were made in the years 1931 to 1933 to reimburse Tidewater Southern's general cash and represented the amounts necessary for application to income deficits, etc., and this amount was repaid in years 1934 and 1935.

142. As of December 31, 1935, Tidewater Southern had current assets of \$192,283.94, including [1036] \$153,192.06 of cash. As of the same date total current liabilities aggregated \$82,289.92. Corporate surplus aggregated \$909,697.15. As of January 1, 1939, Tidewater Southern had current as-

sets of \$358,974.49, including \$321,434.38 of cash. As of the same date current liabilities aggregated \$65,450.61 and corporate surplus aggregated \$1,102,290.72.

143. The earnings available for interest of the Tidewater Southern for the years 1922 to 1938 and for the first 10 months of 1939 were:

1922	\$ 17,656	1931	4,899
1923	35,475	1932	50,846
1924	31,949	1933	59,461
1925	77,629	1934	113,967
1926	93,043	1935	114,512
1927	74,137	1936	101,000
1928	74,921	1937	96,213
1929	9,296	1938	102,532
1930	94,263	1939	143,295
(First 10 months)			

144. The Debtor's proportion of revenues on traffic interchanged with Tidewater Southern for the years 1922-1938 and the first nine months of 1939 were:

1922	\$313,461	1933	422,892
1923	388,857	1934	549,069
1924	406,266	1935	544,748
1925	507,208	1936	499,347
1926	575,183	1937	517,467
1927	629,232	1938	538,632
1928	686,818	1939	211,848
1929	546,663	(First 9 months)	
1930	756,303	Average 1929-	
1931	474,557	1938 529,902	
1932	449,353		

[1031]

145. Central California Traction Company owns and operates 53.78 miles of main and branch lines standard gauge electric railroad between Stockton

and Sacramento. It was incorporated in 1905 and was operated independently until 1927 when all of its outstanding stock was acquired in equal parts by the Debtor, the Santa Fe and the Southern Pacific. Southern Pacific Company having applied to the Interstate Commerce Commission in or about August 4, 1925, for authority to acquire the capital stock and a majority of the bonds of the Traction Company, the Atchison, Topeka and Santa Fe Railway Company and the Debtor intervened in the proceeding, and opposed the merger, the Santa Fe petitioning to acquire control itself if the Commission found that the public interest would be served by a merger of the Traction Company's line with a larger railway system capable of efficiently maintaining and operating the property, and the Debtor petitioning to construct a line of railroad in the event that the Traction Company became other than an independent line. The Commission, on August 5, 1927, authorized Southern Pacific Company to acquire the Traction Company's stock and bonds, provided that it should within 60 days admit the Debtor and the Santa Fe to participation equally in joint control upon payment of proportionate shares of the cost of the securities to be acquired. Both Santa Fe and the Debtor requested and were granted participation in control upon the conditions above mentioned. [1032]

146. The Traction Company has outstanding \$810,000 principal amount of 5% First Mortgage Bonds, all of which are owned by the three parent

companies. Payment of the principal of said bonds was deferred upon their maturity on April 1, 1936, the three owning companies agreeing to forbear presentation of the bonds for payment, and the Traction Company agreeing to continue to pay interest at the rate of five per cent per annum on said bonds during such forbearance. The parent companies have agreed to share equally any operating deficits or profits as well as advances for bond interest, sinking fund or additions and betterments. Its operating income or loss for the years 1928-1938 and the first ten months of 1939 were:

1928	\$ 7,370 (Loss)
1929	76,810 (Loss)
1930	13,225
1931	100,523 (Loss)
1932	66,022 (Loss)
1933	30,643 (Loss)
1934	14,405
1935	260
1936	28,295
1937	583 (Loss)
1938	16,502
1939 (First 10 months)	48,923

Its operating losses during the eleven years 1928-1938 exceeded its operating income by \$209,264 or an average of \$19,000 per year. Its average income for the five years 1934-1938 was \$11,775.

147. The Debtor's Trustees in their petition to the Court of September 3, 1935, requesting authority to make advances to affiliates of the Debtor, stated:

"As Central California Traction Company is a feeder to said trunk lines (Debtor, Santa

Fe. Southern Pacific) and does not itself produce [1033] sufficient revenue to pay all costs of operation, necessary capital expenditures, interest on its outstanding First Mortgage Bonds, or the payments into the sinking fund required by its First Mortgage; it is necessary for each of said three parent companies to advance to Traction Company one-third of additional funds required for such purposes."

The Income and Profit and Loss deficits of Central California Traction Company to be made up by the parent companies for the years 1929-1938 and the first 10 months of 1939 were:

1929	\$169,366
1930	86,458
1931	195,925
1932	160,705
1933	89,991
1934	91,637
1935	61,373
1936	19,096
1937	55,745
1938	27,287
1939 (first 10 months)	None

The total Income and Profit and Loss deficits of the Central California Traction Company to be contributed by the three proprietary companies during the ten year period 1929-1938 aggregated \$957,583 or an average of \$95,758 per year. The portion of such deficits absorbed by the Debtor amounted to \$319,194 or an average of \$31,919 per year.

STATEMENT OF ACTUAL CASH ADVANCES TO
CENTRAL CALIFORNIA TRACTION COMPANY BY
THE THREE PARENT COMPANIES

January 1, 1929 to October 31, 1939

	Advances Account Operation	Advances for payments into Sinking Fund for Retirement First Mortgage Bonds	Advances to Retire First Mortgage Bonds in hands of public at maturity April 1, 1936	Total Advances
1929	\$ —	\$ —	\$ —	\$ —
1930	—	—	—	—
1931	—	409,999.41	—	409,999.41
1932	660,589.99	31,410.00	—	691,999.99
1933	45,300.00	30,300.00	—	75,600.00
1934	30,150.00	29,250.00	—	59,400.00
1935	75,420.00	28,080.00	—	103,500.00
1936	51,150.00	—	96,000.00	147,150.00
1937	89,100.00	—	—	89,100.00
1938	59,700.00	—	—	59,700.00
1939 (first 10 months)	56,250.00	—	—	56,250.00
Totals	\$1,067,659.99	\$529,039.41	\$96,000.00	\$1,692,699.40
W. P. Propn.	\$ 355,886.66	\$176,346.47	\$32,000.00	\$ 564,233.13

148. The Traction Company has a value to the Debtor as a feeder and would be of value to any corporation which might succeed to its properties. The Debtor's Trustees, in their management of the Debtor's property, have considered it important that default not be permitted in the payment of interest on the outstanding bonds of the Traction Company or of the Debtor's share of other advances to the Traction Company. Annexed hereto and made a part hereof, marked Exhibit I is a true copy of a letter dated March 26, 1937, from Charles Elsey, President of the Debtor, [1034] to the Refunding Mortgage Trustee. The Debtor's proportion of revenues

from the traffic interchanged with the Traction Company during the period 1928 to 1938 and for the first 9 months of 1939 were:

1928	\$257,511	1934	216,253
1929	203,706	1935	216,522
1930	286,632	1936	226,530
1931	194,263	1937	246,322
1932	219,208	1938	233,735
1933	207,638	1939 (First 9 months)	139,069

149. Alameda Belt Line owns 16.08 miles and operates 17.85 miles of standard gauge belt line railroad in the City of Alameda. It has an authorized capital stock of 10,000 shares of the par value of \$100 each of which 9,422 are now outstanding. Except for directors' qualifying shares, the stock is owned in equal proportions by the Debtor and the Santa Fe. The parent companies have agreed to share equally in operating deficits or profits as well as advances for additions and betterments or other requirements. At no time since its organization in 1925 has the Belt Line earned operating expenses. Its railway operating income or loss for 1928-1938 and for the first 10 months of 1939 was:

1928	\$36,977 (Loss)
1929	60,417 (Loss)
1930	20,307 (Loss)
1931	25,674 (Loss)
1932	20,014 (Loss)
1933	5,699 (Loss)
1934	3,767 (Loss)
1935	9,268 (Loss)
1936	24,839 (Loss)
1937	40,147 (Loss)
1938	43,034 (Loss)
1939 (first 10 months)	44,433 (Loss)

Railway operating losses over the period 1928-1938 aggregate \$290,143 or an average of \$26,376 per year.

150. The Debtor's Trustees in their petition to the Court, dated September 3, 1935, requesting authority to make advances to affiliates of the Debtor, stated in part:

"This belt line railroad (Alameda Belt) is a feeder to said two trunk line carriers (Debtor, Santa Fe), being the contact between said trunk line carriers and the industrial district of Alameda, and its revenues are not sufficient to pay all of its expenses. The two parent companies advance to said Belt Line one-half of all such sums as are required to enable Belt Line to pay its necessary expenses of maintaining and operating its railroad, necessary capital expenditures, taxes and interest, if any, to the extent that it has not sufficient resources itself to pay said expenses. * * *

The Income and Profit and Loss deficits of Alameda Belt Line to be made up by the parent companies for the years 1928-1938 and the first 10 months of 1939 were:

1928	\$72,014
1929	59,745
1930	53,175
1931	29,925
1932	32,335
1933	18,100
1934	18,305
1935	27,727
1936	43,425
1937	60,302
1938	71,014
1939 (first 10 months)	57,195

Such deficits aggregated \$486,069 during the eleven year period 1928-1938, or an average of \$44,188 per year. The proportion of the deficits absorbed by the Debtor aggregated \$243,035 or an average of \$22,095 per year.

STATEMENT OF ACTUAL CASH ADVANCES TO
ALAMEDA BELT LINE BY THE TWO PARENT COMPANIES

January 1, 1927 to October 31, 1939

(Also shows capital stock issued
by Alameda Belt Line in Refund of Cash Advances)

Year	Common Capital Stock Issued to Parent Companies to Refund Advances	Cash Advances (Debit)	Value of Capital Stock (Credit)
1927	—	\$ 160,000.00	\$ —
1928	—	230,000.00	—
1928	3000 sh. (7-13-28)	—	300,000.00
1929	—	78,867.02	—
1930	—	262,929.92	—
1931	—	29,285.00	—
1932	—	83,300.00	—
1932	1052 sh. (6-20-32)	—	105,200.00
1932	110 sh. (12- 6-32)	—	11,000.00
1933	—	5,800.00	—
1934	—	19,174.00	—
1935	—	20,700.00	—
1936	—	26,100.00	—
1937	—	74,200.00	—
1938	—	55,800.00	—
1939 (first 10 months)	—	57,200.00	—
		\$1,103,355.94	\$416,200.00
Net Total Oct. 31, 1939		\$ 687,155.94	
W. P. Proportion, one-half		\$ 343,577.97	

151. The carloads of revenue traffic received from and delivered to the Belt Line from the Debtor for the years 1935-1938, inclusive, were [1036]

	1935	1936	1937	1938
Carloads received from Alameda Belt Line.....	2,167	2,980	2,767	2,435
Carloads delivered from Alameda Belt Line.....	2,919	1,892	2,044	2,015
Totals.....	5,086	4,872	4,811	4,450

152. Standard Realty and Development Company was formed as a wholly owned subsidiary of the Debtor's predecessor, Western Pacific Railway Company, primarily for the purpose of handling land purchases and sales in connection with non-operating property. It has no bonded debt. Its income for the years 1922 to 1938 and for the first 10 months of 1939, was:

1922	\$ 26
1923	3,111
1924	650 (Loss)
1925	47
1926	5,417
1927	1,772 (Loss)
1928	4,681
1929	6,509 (Loss)
1930	7,793 (Loss)
1931	5,826 (Loss)
1932	9,763 (Loss)
1933	7,853 (Loss)
1934	5,859 (Loss)
1935	5,997 (Loss)
1936	6,997 (Loss)
1937	5,673 (Loss)
1938	6,183 (Loss)
1939 (First 10 months)	6,694 (Loss)

[1037]

The aggregate deficits during the 1922-1938 period exceed the aggregate income of the Development Company by \$57,593, the average annual deficits during such period being \$3,200.

153. As of December 31, 1935, the Debtor had advanced to the Development Company amounts aggregating \$426,710 most of which was advanced between 1926 and 1928 for the acquisition of additional property. In 1935 the advances amounted to \$17,612 of which \$2,400 represented cash and the balance represented property transferred by the Debtor to the Realty Company. As of January 1, 1939, the aggregate advances had been reduced to \$363,311 by the transfer of properties in Oakland and elsewhere to the Debtor. In addition to such advances, the Development Company is indebted to the Debtor in the amount of \$251,273.07 represented by a note at present physically pledged with the Refunding Mortgage Trustee but on which the First Mortgage Trustee claims a first lien. The Development Company is also indebted to The Western Pacific Railroad Corporation, parent of the Debtor, in the amount of \$110,000 on account of advances made to it by The Western Pacific Railroad Corporation. Such advances, aggregating \$120,000 at June 29, 1932, were pledged with The Railroad Credit Corporation by The Western Pacific Railroad Corporation on June 29, 1932, but the First Mortgage Trustee claims a first lien thereon. Since that date, such advance has been reduced by the payment on October 8, 1935 of \$2,000 and on April 9, 1936 of \$8,000. In addition, the Development Company, since May 24, 1935, has currently paid interest on such advance to The Western Pacific Railroad Corporation, which latter [1038] corpora-

tion has paid them over to The Railroad Credit Corporation. The aggregate amount of interest so paid aggregates \$24,019.15. It has never paid any dividends on its stock nor has it paid any interest on the advances made to it by the Debtor nor on the note held by the Debtor.

154. The balance sheet of the Development Company as of October 31, 1939 is annexed hereto as Exhibit J.

155. Annexed hereto, as Exhibit K, is a statement showing the high and low prices of First Mortgage 5% Bonds on the New York Stock Exchange during each six months period from Jan. 1, 1923 to Dec. 31, 1929; the total principal amount of First Mortgage 5% Bonds sold on the New York Exchange during each such six months period; the high and low prices of First Mortgage 5% Bonds on the New York Stock Exchange for each month from Jan. 1, 1930 to December 1, 1939; and the total principal amount of First Mortgage 5% Bonds sold on the New York Stock Exchange during each such month. The figures and data appearing in Exhibit K were copied from quotations appearing in The Commercial and Financial Chronicle. Any party to this proceeding may use in brief or argument similar data from the same publication as to market quotations of the stocks of The Western Pacific Railroad Corporation, or stocks and bonds of other railway corporations, with like force and effect.

156. The institutions of which the members of the Institutional Bondholders Committee are of-

ficers, namely, Metropolitan Life Insurance Company, The Prudential Insurance Company of America and The Chase National Bank [1039] of the City of New York, would not purchase at any price approximating par the proposed new First Mortgage bonds to be issued by the reorganized company today. Nor would they have purchased them at any price approximating par at any time since the issuance of the Commission Plan dated October 16, 1938.

157. Annexed hereto as Exhibit L is a schedule showing the ratios of annual gross revenues of the Debtor and its subsidiaries for the years 1923 to 1938, inclusive, and the annual gross revenues of Class I Carriers of the United States for the same years, with their respective average gross revenues for the years 1923 to 1927, inclusive, and showing the effect of the construction of the Northern California Extension, as prepared by the officers of the Debtor's Trustees from data obtained from the records of the Interstate Commerce Commission and from the records of the Debtor's Trustees.

158. A schedule is being prepared showing the ratios of the annual net railway operating income of the Debtor and its subsidiaries for the years 1923 to 1938, inclusive, and the annual net railway operating income of the Class I Carriers of the United States for the same years, with their respective average net railway operating income for the years 1923 to 1927, inclusive, and showing the effect of the construction of the Northern California Extension, as prepared by officers of the Debtor's Trustees from data obtained from the records of the Inter-

state Commerce Commission and from the records of the Debtor's Trustees. When said schedule has been [1040] identified by signature of counsel for the Debtor's Trustees, the Institutional Bondholders Committee, and The Western Pacific Railroad Corporation, it may be filed with the Court and when so filed shall constitute a part of this stipulation as Exhibit M.

159. The balance sheet and income statements of the Debtor's Trustees for the year 1939, when available, shall be part of the record of this proceeding.

Dated: San Francisco, California, December 20th, 1939.

PIERCE & GREER
FRANK C. NICODEMUS,
C. W. DOOLING

Attorneys & Counsel
for the Debtor.

CRAVATH, deGERSDORFF,
SWAINE & WOOD

By ROBERT T. SWAINE &

MORRISON, HOHFELD,
FOERSTER, SHUMWAY
& CLARK

By HERBERT W. CLARK.

Attorneys for Institutional
Bondholders Com.

CHICKERING & GREGORY
MILBANK, TWEED & HOPE

Attorneys for First
Mortgage Trustees.

M. C. SLOSS of
SLOSS, TURNER & FINNEY

Attor. & Counsel for
Western Pacific Railroad
Corporation.

ROBERT E. COULSON
WHITMAN, RANSOM,
COULSON & GOETZ—

Attorneys & Counsel for
A. C. James Co.

ANDREW F. BURKE
PILSBURY MADISON &
SUTRO;

DAVIES, AUERBACH
CORNELL & HARDY

(ORRIN J. JUDD,
of Counsel)

Attorneys for Irving Trust
Company—Trustee under
Refunding Mortgage.

C. M. CLAY
BROBECK, PHLEGER &
HARRISON

Attorneys for
Reconstruction Finance Corp.

DANIEL WILLARD; Jr.

Attorney for The Railroad
Credit Corporation.

By **ROBERT BEALL**
of Counsel.

LEROY R. GOODRICH

of Counsel for The Western
Realty Company.

EXHIBIT A.

Western Pacific Railway Company
Plan and Agreement for Reorganization

Dated December 15, 1915

Reorganization Committee

Alvin W. Krech,

Chairman

A. M. Hunt,

James D. Phelan,

George Whittell,

David R. Forgan,

I. De Bruyn,

C. Ledyard Blair,

Frederick H. Ecker,

Starr J. Murphy,

William A. Read,

William Salomon,

Richard B. Young,

Secretary,

Lyman Rhoades,

37 Wall Street,

New York City

Counsel:

Byrne & Cutcheon,

New York

Chas. S. Wheeler

John F. Bowie,

San Francisco

Depository: The Equitable Trust Company
of New York

37 Wall Street, New York City.

Agents of Depositary:

First Federal Trust Company,
San Francisco, California

Illinois Trust and Savings Bank,
Chicago, Illinois.

Old Colony Trust Company,
Boston, Massachusetts. [1042]

Western Pacific Railway Company

**PLAN AND AGREEMENT FOR
REORGANIZATION**

Introductory Statement.

(Not part of Plan or Agreement.)

In order to enable the holders of certificates of deposit issued under the Western Pacific Railway Company First Mortgage Five Per Cent. Thirty Year Gold Bonds Protective Agreement, dated May 1, 1915, and holders of Western Pacific Railway Company First Mortgage Five Per Cent. Thirty Year Gold Bonds not deposited under said agreement, to judge of the propriety and expediency of the annexed Plan of Reorganization of Western Pacific Railway Company, the Protective Committee acting under said Protective Agreement has thought it best, in explanation of the Plan, to review in this introductory statement, the history of that Company and of the relations between it and The Denver and Rio Grande Railroad Company.

The Existing Road, Its History, Location and Cost.

The Western Pacific Railway Company, a California corporation, was organized in the year 1903.

In the year 1911, it completed the construction of a single track line of railway extending from Salt Lake City, Utah, to San Francisco, California; the total length of the road being 926* miles. The road is well located and is constructed on a grade which in no place exceeds one per cent. The character of the construction and the location and alignment of the road are such that the Railway is a first-class instrument of transportation.

The actual cash cost of constructing the road, including no expenditure not discharged by payment of cash and allowed by the rules of the Inter-State Commerce Commission, amounted to approximately \$77,800,000.

Sources From Which Funds for Construction
Were Derived.

The monies with which the Western Pacific Railway Company was constructed were obtained from the following sources:

Proceeds of sale of First Mortgage Bonds	\$46,243,120.00
Proceeds of sale of Second Mortgage Bonds	18,750,000.00
Proceeds of sale of capital stock	163,000.00
Interest on trust funds deposited during construction	1,870,146.00
Accrued interest on Second Mortgage Bonds	52,905.00
Monies borrowed	16,408,650.00
Income from operation pending construction used for construction	754,353.00
Total	†\$84,242,174.00

*This is the length of the main line. The Western Pacific Company owns in addition lines of about 20 miles in length.

†The difference between this sum and the

Substantially all monies expended by the Western Pacific, except those derived from the sale of First Mortgage Bonds, interest on mortgage funds deposited in trust and operating income were derived from The Denver & Rio Grande Railroad Company (the owner of five-sixths of the stock of the Western Pacific Company); either through the purchase by the Denver Company of Western Pacific Second Mortgage Bonds or through loans made directly to the Western Pacific Railway Company by the Denver Company or its subsidiaries.

Status of Accounts Between the Western Pacific Company and the Denver Company.

In round figures the indebtedness now owing by the Western Pacific Company to The Denver and Rio Grande Railroad Company and its subsidiaries computing interest to February 28th, 1916, is as follows:

Debt due Denver Company by Western Pacific Railway Company:	
Second Mortgage Bonds (all being owned by Denver Company)	
Principal amount	\$25,000,000
Interest accrued and unpaid	8,200,000
Monies advanced by Denver Company upon promissory notes or open account	
Principal amount	17,500,000
Interest accrued and unpaid on notes and balances	4,800,000
Total	\$55,500,000

amount of the monies spent for construction was expended in paying interest on First Mortgage Bonds accruing after the period of construction. [1043]

The monies owed the Denver Company exceed the monies advanced not only because interest has accumulated but for the reason that the Second Mortgage Bonds were purchased at a discount.

Condition of Denver Company After Completion of Western Pacific Line.

When the Western Pacific Railway was completed in the year 1911, the credit of The Denver and Rio Grande Railroad Company, the principal stockholder of the Western Pacific Company, was practically exhausted and neither corporation was able to finance the construction of feeders or extensions, although it was recognized that in the absence of advantageous traffic arrangements with other railroads in California such feeders and extensions were essential to make the Western Pacific self-supporting. Prior to the completion of the Western Pacific line such conditions with respect to transcontinental traffic had become established in California that the Western Pacific has never been able to obtain a division of interline charges yielding an adequate return for the service performed in transporting freight originating upon other transcontinental lines from the Pacific Coast to Salt Lake.

Obligations Assumed by Denver Company to Western Pacific Company and Its First Mortgage Bondholders.

The Western Pacific Railway was constructed at the instance of the Denver Company, which lent its credit to the enterprise, not only in advancing mon-

ies as above outlined but also in guaranteeing (in effect) payment of the interest on the First Mortgage Bonds of the Western Pacific. In order to facilitate the sale of the First Mortgage Bonds of the Western Pacific Company, The Denver and Rio Grande Railroad Company (of Colorado) and the Rio Grande Western Railway Company, parties of the first part, (since consolidated into the existing The Denver and Rio Grande Railroad Company, of Colorado and Utah), the Western Pacific Railway Company, party of the second part, and the Bowling Green Trust Company, Trustee under the Western Pacific First Mortgage, party of the third part, entered into an agreement dated June 23, 1905 (commonly known and herein referred to as "Contract B") by the provisions of which The Denver and Rio Grande Railroad Company and the Rio Grande Western Railway Company, parties of the first part, undertook and agreed to loan to the Western Pacific Railway Company sums which, together with the earnings of that corporation, would be sufficient to enable it to meet its operating expenses and taxes and to make the payments of interest and sinking fund monies called for by the First Mortgage Bonds of the Western Pacific Railway Company and the Mortgage securing the same. This contract contained provisions by which The Denver and Rio Grande Railroad Company and the Rio Grande Western Railway Company undertook to pay to the Trustee of the mortgage securing the First Mortgage Bonds of the Western Pacific Rail-

way Company a sum which, together with the amount actually appropriated and paid over by the Western Pacific Railway Company for that purpose, would be sufficient to discharge as the same accrued the interest payable upon the First Mortgage Bonds of the Western Pacific Railway Company. The Denver and Rio Grande Railroad Company in 1908 assumed the obligations of its predecessors under Contract B and also guaranteed the payment of interest upon many of the then outstanding Western Pacific First Mortgage Bonds by endorsement on the bonds themselves. Bonds in the principal amount of about thirty-seven million dollars are thus endorsed. The Committee, however, is advised by counsel that this endorsement does not add materially to the obligation assumed by Contract B.

Defaults in Payment of Interest.

On March 1, 1915, the Western Pacific Company defaulted in the payment of the interest then due on its First Mortgage Bonds and the Denver Company failed to perform its obligations with respect thereto. Shortly thereafter The Equitable Trust Company of New York, as substituted Trustee under the mortgage securing Western Pacific First Mortgage Bonds, commenced proceedings for the foreclosure of the First Mortgage in the United States District Court for the Northern District of California and Mr. Frank G. Drum and Mr. Warren Onley, Jr., were appointed Receivers of the Western Pacific Railway Company. On September 1, 1915, default again occurred in the payment of the interest which

on that day became due upon Western Pacific First Mortgage Bonds. Another like default must occur on March 1, 1916. The principal of the \$50,000,000 of bonds has been declared due and payable forthwith. The total amount of interest which will be due and unpaid March 1, 1916, is \$3,750,000.

Effect of Foreclosure Upon Rights Arising Under Contract B.

The effect of the sale of the properties of the Western Pacific Company on foreclosure will be to free the Western Pacific property in the hands of the purchaser from obligations of the Western Pacific Company to the Denver Company. In other words, foreclosure will result (unless the Denver Company purchase the Western Pacific property at foreclosure sale or some other person or corporation purchase it for more than the amount due upon the Western Pacific First Mortgage bonds) in a direct loss to the Denver Company of its entire investment in the property, an investment which is now represented by a debt of about \$55,500,000. On the other hand, the Committee is [1044] advised that the foreclosure sale will not operate to discharge the obligations of the Denver Company to the Western Pacific bondholders except to the extent that monies realized from the sale are applied to the payment of the bonds or bonds are used to pay the purchase price.

Situation of Western Pacific Bondholders.

The situation, therefore, of the Western Pacific Bondholder is peculiar. He has a claim against the

Western Pacific Company and has the right to have the property of that Company sold and the proceeds applied, so far as the same will go, in discharge of his claim. He has also a claim against the Denver Company for unpaid interest and will have a claim for interest to accrue on the portion of his debt not discharged by application of the proceeds of the sale of the properties of the Western Pacific Company. Probably, moreover, the Trustee under the Western Pacific First Mortgage, if it elect to adopt that alternative, may recover judgment against the Denver Company for all of the damages suffered by the First Mortgage bondholders by reason of the Denver Company's breach of its obligation under Contract B, considered as an entirety. This makes the question of the financial responsibility of the Denver Company a matter of interest and importance to the Western Pacific bondholders.

Indebtedness and Earnings of The Denver & Rio Grande Railroad Company.

The secured debt of the Denver Company as the same now exists (it has substantially no floating debt) is substantially the following:

Bonds secured by the First Consolidated Mortgage of The Denver and Rio Grande Railroad Company (of Colorado) dated, June 15, 1886.....	\$40,507,000
Bonds secured by the Improvement Mortgage of The Denver and Rio Grande Railroad Company (of Colorado), dated June 1, 1888.....	8,335,000
Bonds secured by First Trust Mortgage of The Rio Grande Western Railway Company, dated July 1, 1889.....	15,190,000
Bonds secured by First Consolidated Mortgage of Rio Grande Western Railway Company, dated April 1, 1889.....	15,080,000
Bonds secured by First Mortgage of Utah Central Railroad Company, dated January 1, 1898.....	390,000
Bonds secured by First and Refunding Mortgage of The Denver and Rio Grande Railroad Company (of Colorado and Utah), dated Aug. 1, 1908.....	*33,292,000
Bonds secured by Adjustment Mortgage of The Denver and Rio Grande Railroad Company (of Colorado and Utah), dated May 1, 1912.....	10,000,000
Equipment Trust Obligations secured by Equipment Trust Mortgage, dated September 1, 1907.....	300,000
Total	\$123,094,000

*This amount does not include \$7,005,000 bonds of this issue which are pledged under the Denver Company's Adjustment Mortgage.

The net income of the Denver Company for the past four years (after deducting its bond interest and taxes) is shown by the following table compiled from the records of that Company:

For year ended June 30th.	1912	1913	1914	1915
Net Income	\$1,144,763.33	\$2,094,179.66	\$1,400,375.29	\$1,418,730.58
Appropriations from Income,				
For Sinking & Renewal Funds	137,843.81	247,807.92	263,888.82	273,044.89
For Additions & Betterments		389,000.00	80,927.52	271,045.46
Total Appropriations	137,843.81	636,807.92	344,816.34	484,090.35
Balance of Income Transferred to credit of Profit & Loss	\$1,006,919.52	\$1,457,371.74	\$1,055,558.95	\$ 934,640.23

The net earnings of the Denver Company during the five months of the current year—July to November inclusive—have substantially increased as compared with the earnings of the corresponding months of 1914. The Company's business during these months has, however, been favorably affected to some extent, by special and temporary conditions.

Present Condition and Prospects of the Western Pacific Railway Company.

The assets of the Western Pacific Railway Company now in the hands of receivers consist, principally, of physical properties; the reproduction value of which your Committee believes to be at least \$75,000,000. It is estimated that the receivers will have on hand at the date of sale at least \$600,000 in cash or its equivalent for the purposes of the proposed reorganization. Since the completion of the line in 1911 the Western Pacific Railway Company has reported earnings over and above the cost of operation, maintenance and taxes as follows:

June 30, 1912.....	\$ 564,214.06
June 30, 1913.....	1,040,330.07
June 30, 1914.....	321,506.95

The Receivers' report for the year ending June 30, 1915, showed a net income of \$617,258.44.

The earnings of the Western Pacific for the past five months are considerably larger than those for the corresponding period of 1914, but cannot be considered an absolutely fair criterion of the present earning power of the corporation. During those

months conditions, the character of which are temporary (such as travel incident to the Panama-Pacific Exposition) have contributed to the earnings of the Company.

The Protective Committee has taken the advice of expert engineers and railroad operators with respect to the problem of rendering the Western Pacific enterprise self-supporting. It has consulted, particularly, Mr. Joseph H. Young, now President of the Norfolk Southern Railroad, who is thoroughly familiar with operating and traffic conditions in Western Pacific territory. It has also had the benefit of two reports dealing with the earnings and properties of the Western Pacific Company and the proper development of those properties, both of which were prepared prior to the organization of the Protective Committee—one (by Mr. B. F. Bush and Mr. E. L. Brown) having been prepared at the instance of the Denver Company and the other (by Mr. John F. Stevens) at [1045] the instance of the bankers who originally marketed the Western Pacific First Mortgage Bonds. The conclusions of the Committee with respect to needed improvement, equipment and extension of Western Pacific lines and the results, that reasonably may be expected therefrom are based almost wholly upon views in which all of the gentlemen named seem to be in substantial agreement. This is particularly true with respect to the advisability of constructing lines or otherwise acquiring facilities in the San Joaquin

Valley and Delta and in the Santa Clara Valley in California, also with respect to the larger items of betterments of the existing line and of additional property, particularly equipment, to be acquired for use in connection therewith. Upon the basis of traffic now carried by the Western Pacific (that is to say, without allowance for any additional business), the proposed expenditures for new equipment and for betterments of existing facilities should so increase the net earnings of the Company that they will amply provide for the interest to accrue upon the \$20,000,000 principal amount of New Bonds to be issued as provided in the Plan.

Purposes and General Considerations.

The Protective Committee purposes, if it be practicable to do so at a proper price, that the Reorganization Committee, directly or through a nominee or nominees, shall acquire the properties of the Western Pacific Company on behalf of the holders of such of the First Mortgage bonds as shall be subject to the Plan and Agreement of Reorganization, using the bonds under its control, so far as permissible, in payment of the purchase price, that the properties so acquired shall thereupon be transferred to a new corporation (the proposed Operating Company) and securities issued and disposed of by that company and the proposed Holding Company, as set forth in the annexed Plan.

The Protective Committee has at all times kept in view the value attaching to the claims against the

Denver Company to be acquired as contemplated by the Plan and therefore has designed in the Plan and Agreement to provide the Reorganization Committee and later the Holding Company with powers and means to pursue the claims against the Denver Company that shall become subject to the Plan and Agreement in order that as much as possible may be realized (whether by negotiation or suit or both) on the obligations of that Company under Contract B and under its endorsed guaranties. Since the formation of the Protective Committee no negotiations with the Denver Company have taken place and no understanding of any kind with respect to any settlement or adjustment of its obligation exists in any form. The financial condition of the Denver Company is such that it has seemed possible that it may become necessary for the Holding Company to take measures to protect its claim against the Denver Company, and for that reason provision is made in the plan for the raising of funds, if necessary to prevent the extinguishment by means of the possible foreclosure of mortgages upon the Denver Company's property of the claims to be acquired by the Holding Company. The Adjustment Mortgage of the Denver Company, under which there are outstanding \$10,000,000, principal amount, of Adjustment Mortgage Bonds, is now in default (although the interest on these bonds has been regularly paid) by reason of the failure to pay interest upon Western Pacific First Mortgage Bonds, and, should this Adjustment Mortgage be foreclosed, the

Refunding Mortgage of the Denver Company securing bonds in the principal amount of more than \$33,000,000.00 (exclusive of about \$7,000,000 thereof pledged under the Adjustment Mortgage) may come into default. For the same reason and because of the position that the Western Pacific property occupies in relation to other railway properties and the resulting necessity of protecting its traffic relations, the Protective Committee has deemed it extremely important that power shall exist also to make use of a portion of the proceeds of the \$20,000,000 of New Bonds in such manner as may seem to the Reorganization Committee prior to the completion of the reorganization and thereafter to the Board of Directors of the Holding Company most advantageous in the interest of the reorganization. Accordingly in clause (b) of Article V of the Plan reasonable latitude in the application of a portion of the moneys to be raised has been provided for.

The necessity of providing for a common agency for the enforcement and protection of the claims against the Denver Company and of raising funds if needed for this purpose is one of the reasons for the formation of the Holding Company. This arrangement is supported also by other reasons, such as: the possibility that after more careful consideration it may be thought necessary or wise to organize separate corporations for the operation of the railway in the states of California, Nevada and Utah respectively, in which event a common ownership of their stocks will be necessary; the fact that

a very burdensome stockholders' liability attaches to stock in any California corporation, a liability which might seriously interfere with the saleability and consequently impair the market value of the stock of the Operating Company; if in the hands of the public; and the further fact that under the laws of California a majority of the directors of the Operating Company must reside in that State, although more than three-quarters of the new stockholders will, at least at the time of the completion of the reorganization, be residents of other sections of the country and be entitled to insist upon direct representation in the determination of the general policies and the management of the financial affairs of the reorganized company. It is possible, nevertheless, that the conditions which call for the creation of a holding company will not be of indefinite duration and that the stock of the Operating Company may within a reasonably short time be distributed among the stockholders of the Holding Company.

Statements Not to be Taken as Representations, and
Mistakes and Errors Not to Form Ground for
Complaint.

The statements contained in this Introductory Statement, whether of fact or opinion, have been based upon such information and advice as have been available and are believed to be substantially correct, but no such statement is intended or is to be taken to be a representation of fact or law or an inducement to any action or omission to act.

This Introductory Statement does not constitute in any sense a part of the Plan or of the Agreement hereto annexed. No error or misstatement herein of any description shall constitute ground for the withdrawal of any Depositor from the Plan and Agreement or for any complaint with respect to the Plan and Agreement or to any consequences arising from having become a party thereto. [1046].

PLAN OF REORGANIZATION

I.

Terminology Used in the Plan and Agreement.

In the following Plan and Agreement certain convenient terms are employed to obviate the repetition of awkward forms of reference. The terms and their respective meanings, except where a different meaning is plainly indicated by the context, are the following:

The "Old Company" signifies the existing Western Pacific Railway Company.

The "Denver Company" signifies the existing The Denver and Rio Grande Railroad Company, a consolidated corporation of Colorado and Utah.

The term "Operating Company" refers to a proposed new corporation to be organized (probably under the laws of the State of California) for the purpose of owning and operating the existing lines of Western Pacific Railway Company and proposed extensions thereof. In the discretion of the Reorganization Committee two or more corporations may be organized for this purpose, as may

seem most advantageous having regard to laws of the states of California, Nevada and Utah, respectively. The term "Operating Company" wherever used in this Plan is to be understood to comprehend whatever corporation or corporations may be employed for the purposes stated, as finally determined by the Reorganization Committee.

The term "Holding Company" refers to a proposed new corporation to be organized under the laws of such state as may be selected by the Reorganization Committee, for the purpose of owning and holding all of the capital stock of the Operating Company (except directors' qualifying shares) and of holding and enforcing or otherwise realizing upon claims against the Denver Company acquired from Depositors as provided in the Plan and Agreement and existing or to arise either under the contract, known as "Contract B" (an agreement dated June 23, 1905, between (a) the former The Denver and Rio Grande Railroad Company and Rio Grande Western Railway Company, predecessors of the Denver Company, and (b) the Old Company and (c) the Trustee under its First Mortgage), which in effect guarantees the payment of interest upon the Old Company's existing First Mortgage Bonds or under formal guaranties stamped upon certain of the Old Company's First Mortgage Bonds.

The term "Contract B" refers to the above-mentioned agreement dated June 23, 1905.

The term "Old Bonds" refers to the existing First Mortgage Five Per Cent Thirty-Year Gold

Bonds of the present Western Pacific Railway Company.

The term "New Bonds" refers to new First Mortgage Five Per Cent. Bonds which it is proposed shall be issued by the Operating Company.

The term "New Mortgage" refers to the mortgage which is to be created to secure the New Bonds.

The term "Protective Committee" refers to the Committee mentioned in the annexed agreement, representing holders of Western Pacific Railway Company First Mortgage [1047] Five Per Cent. Thirty-Year Gold Bonds; which is acting under an agreement dated May 1, 1915.

The term "Protective Agreement" refers to the last-mentioned agreement of May 1, 1915.

The term "Plan and Agreement" refers to this Plan of Reorganization and the annexed Agreement, the same being taken together as a single instrument.

The term "Reorganization Committee" refers to the Committee constituted by the Plan and Agreement, as the same may be constituted at the time referred to.

The term "Depository" refers to the depository that shall be acting hereunder at the time referred to.

The term "Depositors" signifies holders at the time referred to of certificates of deposit issued under the Protective Agreement or under the Plan and Agreement and all holders of Old Bonds which shall be subject to the Plan and Agreement and the

term shall be construed to include not only persons acting in their own right, but also trustees, guardians, committees, agents and all persons acting in a representative or fiduciary capacity, and those represented by or claiming under them, and partnerships, associations, joint-stock companies and corporations as well as individuals.

The term "Deposited Bonds" refers to all Old Bonds that shall at the time referred to be subject to the Plan and Agreement.

The phrase "claims against the Denver Company" or any expression of like import, unless inconsistent with the context, shall be deemed to refer to and comprehend all claims, demands and choses in action and all rights of every description, susceptible of transfer (whether in law or in equity) as contemplated by the Plan and Agreement, against or enforceable against or with respect to The Denver and Rio Grande Railroad Company or any predecessor or successor corporation or any of the property or estate of said Company or of any such predecessor or successor corporation, which have arisen or exist or may arise or exist in favor of or be enforceable by or on behalf or for the benefit of holders, past, present or future, of Deposited Bonds or coupons, whether under or by virtue of Contract B or any guaranty or guaranties of payment of interest endorsed upon any of such Deposited Bonds or under or by virtue of any provision of the Mortgage securing the Old Bonds or otherwise by virtue of ownership of or any interest in the Deposited Bonds or coupons.

The term "Underwriting Syndicate" refers to a Syndicate which has been organized to purchase such of the New Bonds as shall not be purchased by Depositors, together with shares of stock in the Holding Company, as provided in subdivision (B) of Article IX of this Plan.

II.

The Reorganization Committee—Depositary.

Inasmuch as the Protective Committee already represents a very large majority of the Old Bonds—the only securities of the Old Company which are expected to participate in the benefits or execution of the Plan—that Committee is to be continued with its present membership as the Reorganization Committee which will be charged with the supervision and direction of the proceedings for the execution of the Plan and Agreement, with the powers more specifically set forth in the annexed Agreement. Pending the completion of the reorganization, if in its judgment occasion shall require, it may exercise, but only upon the affirmative vote of three fourths of all of its members, any of the powers which the Plan contemplates shall be exercised by the Holding Company or by the Operating Company; but any compromise or settlement of claims against the Denver Company made by the Reorganization Committee under the power last conferred, shall be made, and shall be, subject to the condition that such compromise or settlement shall be submitted to the Depositors as provided in the annexed Agreement and

shall not be disapproved in the manner therein provided by more than one-third in amount thereof.

The Reorganization Committee is to be composed of the following persons:

A. M. Hunt
James D. Phelan
George Whittell
David R. Forgan
I. de Bruyn
C. Ledyard Blair
Frederick H. Ecker
Alvin W. Krech
Starr J. Murphy
William A. Read
William Salomon
Richard B. Young

Members may be added to this Committee and substitutes for any of the members of the Committee who may die, resign, or become incapacitated to act may be appointed—all as provided in the annexed Agreement.

The Reorganization Committee is empowered to delegate the execution of the Plan to a sub-committee or Board of Managers, which in its discretion may be appointed by the Reorganization Committee.

Subject to the power of the Reorganization Committee to make a different arrangement. The Equitable Trust Company of New York will act as Depositary under the Plan and Agreement.

III.

New Corporations—Foreclosure and Purchase of Property.

The reorganization of the old Company is to be effected, subject to the power of the Reorganization Committee, in its absolute discretion, to vary details of method, through the agency of:

(a) A new corporation or several corporations (called hereafter, whether eventually one or more, the "Operating Company") which when the reorganization is complete will be vested with the title to and will operate the Western Pacific property, (providing the Reorganization Committee shall be able to purchase or arrange for the purchase of the same at a proper price), and as well all additions thereto and extensions thereof. It is expected that the Operating Company will receive and expend

[1048]

the new moneys provided for in this plan except such as are required for expenses of foreclosure and reorganization and for the payment of the distributive shares of non-assenting bondholders. It will issue the New Bonds provided for in the plan and create the New Mortgage securing them.

(b) A corporation (called herein the "Holding Company") which upon completion of the reorganization will own (1) all of the stock of the Operating Company, except directors' qualifying shares, (2) the interest in any deficiency judgment against the Old Company apportionable to Deposited Bonds and (3) the claims against the Denver Company

arising under Contract B with respect to interest upon Deposited Bonds or under any guaranties endorsed on Deposited Bonds. It will issue to the Reorganization Committee or its nominees its preferred and common stock to be exchanged for Deposited Bonds or sold with new bonds to an Underwriting Syndicate or disposed of otherwise as hereinafter provided.

The instrumentalities and methods to be employed to effect the reorganization are to be determined by the Reorganization Committee in its absolute discretion, provided that in substance the results contemplated by the Plan and Agreement shall be accomplished.

In effecting the purchase of the property of the old Company the Reorganization Committee will use, to such extent and in such manner as may be necessary and practicable, the Deposited Bonds and money to be provided by calls upon purchasers of new bonds, whether Depositors or members of the Underwriting Syndicate.

IV.

Securities and Obligations of Old Company.

The stock, bonds and other obligations of the Old Company are substantially the following and are to be refunded, paid and eliminated by foreclosure as indicated:

To be Refunded:

First Mortgage 5% Gold Bonds	\$50,000,000.00
Coupons appertaining to the same in default (as of March 1, 1916)	3,750,000.00

Paid or to be paid in cash as audited by the

Receivers:

Unsecured obligations of Old Company as heretofore ascertained by the Receivers (other than obligations owing to the Den- ver Company), to be paid by the Receivers pursuant to order of court, about (net)	163,625.54
Equipment obligations of Receivers of Old Company (authorized but not yet issued)	600,000.00

To be eliminated by Foreclosure:

Second Mortgage 5% Bonds (owned by Den- ver Company and pledged under its Re- funding and Adjustment Mortgages)	25,000,000.00
Claims for interest on Second Mortgage Bonds in default (owned by Denver Company and pledged under its Adjustment Mortgage) and unsecured debt (owned by Denver Com- pany—and in small part by its subsidiary, the Utah Fuel Company—and in part pledged under the Denver Company's Ad- justment Mortgage), as of date of appoint- ment of Receivers, about	26,800,000.00
Capital stock (5/6 owned by Denver Company and pledged under its Refunding and Ad- justment Mortgages)	75,000,000.00

In addition to the foregoing there are certain un-
liquidated tort claims against the Old Company of
relatively small amounts which are the subject of
pending actions. There may also be claims as yet
unknown. Probably none of the claims remaining in
existence (other than the \$163,625.54 of claims above
provided for) is entitled to preference in the re-
ceivership proceedings. It is expected that all re-
maining claims will be eliminated by foreclosure.

These claims are in substance those owned by the Denver Company as stated above. The Reorganization Committee will have power, to be exercised, if at all, in its absolute discretion to consent to or arrange for the payment, settlement or purchase of any such claims, other than claims belonging to the Denver Company or its subsidiaries. [1049]

V.

CASH REQUIREMENTS.

The estimated cash requirements of the Plan are the following:

Total amount estimated to be required \$18,600,000

It is expected that this amount will be applied as follows:

- (a) To the purposes indicated below in this clause (a), in the amounts so estimated or in different proportions as the Reorganization Committee, prior to the completion of the reorganization, or the Board of Directors of the Holding Company, thereafter, may determine or approve; the unexpended balance if any, to be employed as specified below in clause (b).

8,093,750

To the distributive shares of non-assenting bondholders, underwriting commission, expenses of foreclosure and reorganization, including court costs, compensation and allowances of the Receivers and their counsel, the Mortgage Trustee and its counsel, taxes on creation and issuance of new securities, compensation and expenses of the Protective and Reorganization committees, their depositaries and counsel, fees of engineering, accounting and other experts, engraving, printing and miscellaneous requirements \$2,000,000

To betterments of existing road 2,579,750

To acquisition of new passenger and freight equipment for Operating Company 3,514,000

\$8,093,750

(b) To the acquisition by purchase, construction or otherwise of extensions and feeders, including payment of interest during construction; the acquisition of additional new property other than extensions, including floating equipment; payment of the Receivers' car trust obligations; provision of working capital for the Operating Company; and supplying for any of the purposes mentioned in clause (a) any amount required therefor in excess of the amount there specified; (moneys to be applied in such amounts severally as the Reorganization Committee, prior to the completion of the reorganization, or the Board of Directors of the Holding Company, thereafter, may determine or approve); and, if the Board of Directors of the Holding Company and the Board of Directors of the Operating Company—or the Reorganization Committee prior to the completion of the reorganization—shall so determine, (in every case by vote of three-fourths of all members and subject to the approval and upon such conditions, if any, as may be imposed by the Railroad Commission of the State of California), to the protection of the claims against the Denver Company to be acquired as contemplated by the Plan and of the Operating Company's situation with respect to its traffic relations

\$10,506,250

Total

\$18,600,000*

*See Note, p. 7.

VI.

Provision For Cash Requirements.

Provision for meeting the cash requirements of the Plan has been made as follows:

It is estimated that on March 1, 1916, the Receivers should have on hand available for use by the Operating Company, in cash or its equivalent for the purposes of the Plan, not less than.....\$600,000

New Bonds of the Operating Company are to be sold either to Depositors or to an Underwriting Syndicate which has been formed and has underwritten the sale of \$20,000,000 of New Bonds together with certain stock of the Holding Company, as set forth in Article IX of this Plan, realizing.....18,000,000

Total to be provided.....\$18,600,000*

VII.

Securities To Be Issued By The New Companies.

Securities are to be issued by the Operating Company and the Holding Company, respectively, as follows:

*The above statements of Cash Requirements and of the Provision made therefor are merely estimates and not to be deemed to limit the amount that may be raised or expended to effect the reorganization. The Reorganization Committee shall have power to accomplish the purposes proposed, if necessary, by somewhat increasing or diminishing the amount of bonds to be sold (but without varying the consideration or terms of sale) or by disposing of stock of the Holding Company freed for use by reason of the failure of holders of Old Bonds to become Depositors (see page 9). [1050]

By the Operating Company:

(Subject to the approval of the Railroad Commission of the State of California and any other public officials having jurisdiction.)

First Mortgage Gold Bonds (the New Bonds), authorized issue, \$50,000,000

To be secured by first mortgage upon all of the existing railway properties of the Old Company and all property hereafter acquired by the Operating Company integrally connected therewith and all property acquired by means of the use of proceeds of the New Bonds or against which New Bonds shall be issued.

To be sold forthwith to the Depositors or to members of the Underwriting Syndicate, of said authorized issue, bonds of the principal amount of

20,000,000

To be dated March 1, 1916 (or otherwise as the Reorganization Committee may determine); to bear interest at the rate of 5% per annum, payable March 1 and September 1; to mature March 1, 1946, and to be redeemable, in whole or in part, at principal amount and accrued interest, after published notice, upon any interest payment date.

To be issued thereafter

30,000,000

for or against betterments, additions and extensions, under safeguards to be prescribed in the New Mortgage, at not exceeding the rate of \$1,000, principal amount of bonds, for \$1,000 of money actually invested in additional physical property subject to the New Mortgage or in securities subject to the New Mortgage representing the entire interest in physical property; to bear interest at a rate or rates not in any instance exceeding 6%; by their terms to be redeemable;—rates of interest, dates of maturity and redemption prices to be fixed by the Board of Directors of the Operating Company with the approval of the Board of Directors of the Holding Company, from time to time as bonds shall be issued.

Capital Stock (to be issued forthwith):

Preferred, 6% non-cumulative; preferred both as to dividends and in liquidation; to be redeemable at 105 and accrued dividends, if any, for the then current year and to be convertible into Common Stock at any time prior to any date fixed for redemption at the rate of dollar for dollar.

27,500,000

Common

47,500,000

In its discretion and with the approval of the Railroad Commission of the State of California, the Reorganization Committee may cause the Operating Company to issue its obligations bearing interest at the rate of at least six per cent. per annum in place of the Preferred Stock of the Operating Company provided for in the Plan and, in its discretion and with the approval of said Commission, may cause obligations junior to said obligations last mentioned, to be issued in place of such part as it may specify of the Common Stock of the Operating Company provided for in the Plan, and either of said issues or any part of either thereof may be fixed obligations or income obligations and may or may not have fixed dates of maturity and said obligations may be of such character otherwise as the Reorganization Committee may determine consistently herewith.

All of the shares of such stock, preferred and common, or such substituted obligations, will upon completion of the reorganization pass into the ownership of and be held by the Holding Company.

By the Holding Company:

Capital Stock (to be issued forthwith):

Preferred, 6% non-cumulative; preferred both as to dividends and in liquidation; to be redeemable at 105 and accrued dividends, if any, for the then current year and to be convertible into Common Stock at any time prior to any date fixed for redemption at the rate of dollar for dollar.

27,500,000

Common

47,500,000

VIII.

Securities To be Outstanding In Hands Of The
Public.

It is expected that after the completion of the Reorganization, securities will be outstanding in the hands of Depositors and purchasers of New Bonds as follows:

First Mortgage bonds of the Operating Company (the New Bonds)	\$20,000,000
Preferred Stock of the Holding Company	27,500,000
Common Stock of the Holding Company	47,500,000

except that Preferred Stock to the extent of \$500 for every \$1,000 of such Old Bonds as shall not become subject to the Plan and Agreement and Common Stock to the extent of \$750 for every \$1,000 of such Old Bonds, unless otherwise employed by the Reorganization Committee for the purposes of the reorganization, will be returned to the Treasury of the Holding Company. [1051]

IX.

Disposition Of New Securities.

(A) Exchange of Old Bonds for Stock of the
Holding Company and Purchase of New
Bonds by Depositors.

Depositors, including transferees of certificates of deposit, will be entitled to receive in exchange for their Old Bonds and their claims against the Denver Company (all whereof by virtue of becoming subject to the Plan and Agreement will pass to the Reorgan-

ization Committee to be used for the purposes of the reorganization as authorized by the Plan and Agreement), stock (preferred and common) in the Holding Company, either in connection with or without the purchase by them of First Mortgage Bonds of the Operating Company upon the following basis:

A Depositor will be entitled to purchase at 90 and accrued interest New Bonds equal in principal amount to 40 per cent. of the principal amount of his Deposited Bonds and if any Depositor shall so purchase New Bonds he will be entitled to receive, in addition to the New Bonds so purchased and in exchange for his Deposited Bonds, Preferred Stock of the Holding Company to an amount, par value, equal to 55% of the principal amount of his Deposited Bonds and Common Stock thereof to an amount, par value equal to 95% of the principal amount of such Deposited Bonds.

If a Depositor shall not exercise his said privilege to purchase New Bonds he will be entitled to receive, in exchange for his Deposited Bonds, Preferred Stock of the Holding Company of an amount, par value, equal to 50% of the principal amount of his Deposited Bonds and Common Stock thereof to an amount, par value, equal to 75% of the principal amount of such Deposited Bonds.

TABLE EXHIBITING PRIVILEGES AVAILABLE TO DEPOSITORS

Assumes as Basis a Deposit of \$1,000 Principal Amount of Old Bonds.

In Event of	Consideration to be given by Depositor	Per Cent. of Holding of Old Bonds	Securities to Be Received					
			New Bonds Principal Amount	Per Cent. of Holding of Old Bonds	Preferred Stock of Holding Company, Par Value	Per Cent. of Holding of Old Bonds	Common Stock of Holding Company, Par Value	Per Cent. of Holding of Old Bonds
Purchase of New Bonds	(a) Cash \$360, and accrued interest upon \$400 of New Bonds	36	\$400	40	\$550	55	\$950	95
	(b) \$1,000 principal amount of Old Bonds and coupon of March 1, 1915, and subsequent coupons							
	(c) Transfer of claims against Denver Company							
Exchange of Old Bonds for stock with- out purchase of New Bonds	(a) \$1,000 principal amount of Old Bonds and coupon of March 1, 1915, and subsequent coupons	No cash to be paid.	None		\$500	50	\$750	75
	(b) Transfer of claims against Denver Company							

Any Depositor desiring to avail himself of the privilege of purchasing New Bonds must signify his election so to do by executing and delivering to the Reorganization Committee or its nominees a contract of purchase in form prescribed by the Committee, on or prior to the 15th day of February, 1916, unless the time therefor shall be extended by the Reorganization Committee. In the event that a later date be fixed, Depositors will be notified as promptly as practicable, as provided in the annexed Agreement, of the action of the Reorganization Committee.

The cash payable on account of the purchase price of bonds so purchased is to be paid in instalments as follows:

An amount not exceeding 50% of such cash purchase price, after February 15, 1916, and prior to the completion of the reorganization, upon call by the Reorganization Committee. [1052]

The uncalled balance of such 50% (i. e. such part of such first 50% as shall not have been called by the Reorganization Committee) to the Operating Company, at any time upon call by its Board of Directors.

An amount not exceeding an additional 25% to the Operating Company, at any time after January 1st, 1917, upon call by its Board of Directors.

The entire balance of the cash purchase price to

the Operating Company, at any time after June 1st, 1917, upon call by its Board of Directors.

In final adjustment of the purchase-price, accrued interest upon bonds purchased will be charged and interest will be allowed upon instalments previously paid at the coupon-rate.

Any Depositor, upon any instalment-payment-date may anticipate payment of all, but not part, of the instalments of the purchase price of the New Bonds purchased by him then remaining unpaid.

Upon payment by any Depositor of the first instalment payable upon his contract to purchase New Bonds and the surrender of his certificate of deposit, duly endorsed, he will be entitled to receive a new certificate evidencing such payment and also his rights with respect to the New Bonds and the stock which he is to receive hereunder. Payment of further instalments will be receipted for by endorsement upon such certificate upon presentation thereof for the purpose. The bonds and certificates for stock to which a Depositor may be entitled will be delivered only upon payment in full of the amount payable upon his contract of purchase.

Every Depositor who shall elect, as herein provided, to purchase New Bonds and at the date fixed for the payment of the first instalment of the purchase price, shall pay the entire purchase price of the Bonds to be taken by him, will be entitled to borrow from the Underwriting Syndicate or lend-

ers to be provided by said Syndicate (through the agency of the Depository, The Equitable Trust Company of New York, 37 Wall Street, New York City) any amount not exceeding 90 per cent. of the purchase price of the New Bonds to be taken by him (exclusive of accrued interest upon Bonds purchased); such loan to be repaid, with interest at the rate of six per cent. per annum, on or before one year from the date so fixed for the payment of such first instalment of the purchase price and to be secured by all of the Bonds and Certificates of Stock to which the Depositor shall be entitled hereunder upon the making of such payment in full—the Underwriting Syndicate or its representatives to possess upon default such power of sale, for account of the borrower, as is customary in cases of collateral loans by banks in New York City.

Any Depositor who shall elect to purchase New Bonds as provided herein and shall default in making any payment as required by the Plan and Agreement will, unless the Reorganization Committee shall otherwise determine, forfeit any and all payments that he may have already made and all right to which he would otherwise have been entitled to acquire securities, receive benefits or enforce rights hereunder; and in such event the Reorganization Committee in its discretion may cause all of the bonds, claims, shares of stock and benefits to which such Depositor otherwise would have been entitled

hereunder to be sold for his account to satisfy the amount remaining due from such defaulting depositor and all amounts chargeable hereunder against the securities, rights and benefits so sold. But the Reorganization Committee may, in general or in particular instances, enlarge or extend the time for making any of the payments required by the Plan and impose conditions in respect of any payments the time wherefor shall be so extended.

Unpaid coupons (appertaining to Old Bonds) which became due September 1, 1914, and theretofore will be paid in cash by the Trustee under the Mortgage securing the Old Bonds, The Equitable Trust Company of New York.

(B) Sale of New Bonds and Stock to Underwriting
Syndicate.

Such of the New Bonds as shall not be purchased by Depositors are to be taken by an Underwriting Syndicate which has been formed for the purpose and has underwritten the sale, at 90 and accrued interest, of all of the \$20,000,000 principal amount of New Bonds to be issued forthwith, and is to receive \$1,000 principal amount of New Bonds, \$125 par value of Preferred Stock and \$500 par value of Common Stock of the Holding Company for each \$900 of cash (and accrued interest upon \$1,000 principal amount of New Bonds) paid by it. The securities received by an Underwriter in consideration of any given payment are to be the same in char-

acter and amount as those that will be forfeited by Depositors who fail to exercise their privilege of purchasing New Bonds by payment of an equal amount. [1053]

TABLE EXHIBITING CONSIDERATION TO BE PAID BY UNDERWRITERS AND SECURITIES TO BE RECEIVED THEREFOR

Assuming Purchase of \$400, Principal Amount, of New Bonds

Cash to be paid.	Securities to Be Received		
	New Bonds, principal amount	Preferred Stock in Holding Com- pany, par value	Common Stock in Holding Com- pany, par value.
\$360 and accrued interest upon \$400, principal amount, of New Bonds	\$400	\$50	\$200
Assuming Purchase of \$1,000, Principal Amount, of New Bonds.			
\$900 and accrued interest upon \$1,000, principal amount, of New Bonds	\$1,000	\$125	\$500

The Underwriting Syndicate, if the Plan shall be declared operative, is to be paid for its agreement to underwrite the sale of the entire \$20,000,000, principal amount, of New Bonds and to loan monies to Depositors as above provided, a cash commission of two per cent, thereof (i. e., \$400,000). The Equitable Trust Company of New York and Messrs. Blair & Co., William Salomon & Co., and E. H. Rollins & Sons, at the request of the Protective Committee having undertaken, by firm commitment, to form the syndicate above referred to (the subscribers and the amounts of their subscriptions severally to be satisfactory to the Protective Committee) and having discharged such engagement, are to be paid therefor, if the Plan shall be declared operative, a compensation of one-half of one per cent. of the

principal amount of bonds the sale whereof has been underwritten (i. e., \$100,000).

The amounts payable by the Underwriting Syndicate will be subject to call upon ten days' notice at any time after February 15, 1916, by the Reorganization Committee and such amounts as are not so called prior to completion of the reorganization will be subject to call upon like notice by the Board of Directors of the Operating Company.

Upon delivery of bonds to the Underwriting Syndicate, accrued interest upon the bonds so delivered will be charged and interest will be allowed at the coupon-rate upon payments, if any, previously made upon account of the purchase price.

The Underwriting Syndicate may, on the date fixed for the making of the first payment to be made by it, or at any time thereafter, anticipate payment of all or any part of the purchase price of the securities to be taken by it.

X.

Comparative Table of Capitalization and Fixed Charges of Old Company and of the Combined New Companies at Completion of Reorganization.

The following table exhibits the indebtedness, stock and interest charges of the Old Company on the one hand and of the Operating Company and Holding Company (consolidated) on the other:

Obligations and Stock
Outstanding.

Old Company.

New Company.

First Mortgage Bonds	\$50,000,000	*\$20,000,000
Second Mortgage Bonds	25,000,000	None
Unsecured debt (including notes, open accounts, traffic and car service balances and claims for interest in default, owing to the Denver Company as of date of appointment of Receivers), about	26,800,000	None.
Miscellaneous claims as ascertained by Receivers (not including claims of considerable amount paid just prior to Receivership)	163,625.54	None
Capital Stock	75,000,000	75,000,000†
		Preferred
		27,500,000†
		Common
		47,500,000†
Interest Charges:		
First Mortgage Bond Interest	2,500,000	\$1,000,000
Other interest (as of date of appointment of Receivers), about	\$2,200,000††	None
	(accruing, but in principal part never paid.)	

*The Operating Company, when the proceeds of the New Bonds have been expended should possess physical property, securities and cash resources approximately of the value of \$17,500,000, in addition to the property possessed by the Old Company prior to the Receivership, which should add materially to its earning capacity as compared with that of the Old Company.

†These amounts may be somewhat diminished as explained on p. 9.

††Does not include interest on several million dollars of indebtedness to the Denver Company and Utah Fuel Company upon which payment of interest was not regularly accrued upon the Western Pacific books prior to the Receivership.

XI.**Claims Against The Denver Company To Be
Transferred To The Holding Company.**

The Articles of Incorporation of the Holding Company shall provide that the Board of Directors of the Holding Company shall have power to enforce against the Denver Company the claims against the latter company to be acquired by the Holding Company as herein provided or to compromise such claims or to enter into any arrangement in satisfaction thereof, but only upon the condition that their action shall be authorized or ratified by the vote of the holders of two-thirds of such shares of the capital stock of the Holding Company (preferred and common stock voting together) as shall be represented in person or by proxy at a special meeting of the stockholders to be called upon not less than thirty days' notice for the purpose of considering such settlement, compromise or other adjustment, which vote shall represent not less than a majority in amount of the outstanding capital stock of the Holding Company.

It shall be provided by some effectual means that the net proceeds realized by the Holding Company from the enforcement or compromise of claims against the Denver Company and all avails thereof in the form of securities or property shall be paid over or transferred to the Operating Company, and the Holding Company, in the discretion of its Board

of Directors, may transfer said claims to the Operating Company, which may if it shall so determine, cause the same to be subjected to the New Mortgage; provided that if such transfer be made no settlement, compromise or other adjustment of said claims shall be effective without the assent of the stockholders of the Holding Company as above required, or if the Holding Company be dissolved, then a like assent of the stockholders of the Operating Company; and provided, further, that if any expense or liability shall have been incurred by the Holding Company in realizing upon or protecting such claims, the payment or transfer shall be made only after such expense has been reimbursed and such liability discharged out of such proceeds, or avails or discharged or assumed by the Operating Company.

XII.

Restrictions Upon The Sale Or Pledge Of Property And The Creation ~~Of~~ Indebtedness.

The Articles of Incorporation of the Holding Company shall provide that the Holding Company shall not (a) sell, pledge, or in any manner dispose of any part of the stock of the Operating Company, or (b) create any indebtedness of the Holding Company other than such as the Board of Directors shall deem to be essential to the ordinary conduct of the business of the Company, unless such sale, pledge or other disposition of the stock of the Operating

Company or the creation of such indebtedness, as the case may be, shall be approved by the affirmative vote of the holders of two-thirds of such shares of the capital stock of the Holding Company as shall be represented in person or by proxy at a stockholders' meeting of that Company called upon not less than thirty days' notice for the purpose of passing upon the matter in question—which affirmative vote shall in no case be less than a majority in amount of all of the outstanding capital stock of the Holding Company.

The Articles of Incorporation of the Holding Company shall, however, provide that the Board of Directors may, pursuant to the affirmative vote of the holders of two-thirds of such shares of the capital stock of the Company as shall be represented in person or by proxy at a stockholders' meeting called upon not less than thirty days' notice, for the purpose of passing upon the question, (which affirmative vote shall be not less than a majority in amount of all of the outstanding capital stock of the Holding Company), but not otherwise, pledge the assets of the Company, or any thereof, for the purpose of raising money in order to protect the claims against the Denver Company to be acquired by the Holding Company as provided in the Plan from loss or impairment of value by reason of the foreclosure of any of the mortgages upon the property of the Denver Company or otherwise.

The Articles of Incorporation of the Holding Company and of the Operating Company shall be so formulated as to permit a sale of the property and assets of the Operating Company as an entirety either for cash or partly for cash and partly upon credit, or in exchange for bonds or stock or both of any other corporation or corporations, provided (but not otherwise) such sale or disposition and the consideration to be received therefor, shall be approved both by the affirmative vote of holders of two-thirds in amount of the outstanding capital stock of the Operating Company and by the affirmative vote of holders of two-thirds of such shares of the capital stock of the Holding Company as shall be represented in person or by proxy at a stockholders' meeting called, upon not less than thirty days' notice, for the purpose of passing upon the question (which affirmative vote shall be not less than a majority in amount of all of the outstanding capital stock of the Holding Company).

XIII.

Distribution Of The Assets Of The Holding Company In Case Of Dissolution.

The Articles of Incorporation of the Holding Company shall provide that in the event of the dissolution or other liquidation of the Holding Company, no stockholder shall be entitled to have the assets of the Company converted into cash, or to

share in the same generally, but that if proper proceedings shall be taken for the purpose of dissolving or liquidating the Holding Company and if the Board of Directors of the Company shall determine that the assets of the Company shall be distributed in kind and such decision shall be approved by the affirmative vote of a majority in amount of the stockholders of the Company at a meeting thereof duly called for the purpose of considering said matter or of considering the dissolution or liquidation of the Holding Company, the preferred stockholders of the Holding Company shall be entitled and required to receive amounts of Preferred Stock (or obligations issued in lieu of Preferred Stock as permitted hereby) of the Operating Company equal at par value to their respective holdings of the Preferred Stock of the Holding Company, and the common stockholders of the [1055] Holding Company shall be entitled and required to receive pro rata Common Stock of the Operating Company and such other securities and cash, if any, as may properly be apportionable to Common Stock of the Holding Company.

The Articles of Incorporation of the Operating Company shall provide that, in the event of the dissolution or other liquidation of the Operating Company, (subsequently to the dissolution or liquidation of the Holding Company), if the Board of Directors of the company shall provide by resolu-

tion approved by the affirmative vote of eighty per cent. in amount of the outstanding Preferred Stock and eighty per cent. in amount of the outstanding Common Stock of the Operating Company that the assets of the company shall be distributed in kind and for the apportionment of said assets, for the purposes of such distribution, as between the Preferred Stock and the Common Stock of the company, the provision for the distribution and apportionment of assets made by any resolution so adopted and approved shall be effective and binding upon all of the stockholders of the Operating Company.

XIV.

Boards Of Directors Of The Holding Company and Operating Company.

The First Board of Directors of the Holding Company shall be:

A. M. Hunt,
James D. Phelan,
George Whittell,
David R. Forgan,
I. DeBruyn,
C. Ledyard Blair,

Frederick H. Ecker,
Alvin W. Krech,
Starr J. Murphy,
William A. Read,
William Salomon,
Richard B. Young,

Their successors shall be elected at the annual meeting of the Stockholders of the Holding Company to occur during the year 1917, in accordance with the provisions regulating the holding of stockholders' meetings to be contained in the Articles of Association.

The first Board of Directors of the Operating Company shall be named by the Reorganization Committee, but members of said Board will at all times be subject to removal and their successors will be elected by the Holding Company, which will be substantially the sole stockholder of the Operating Company.

XV.

Holders Of Second Mortgage Bonds, Unsecured Creditors And Stockholders Of The Old Company.

No provision is made in the Plan for the allotment of any property or any of the securities or money provided by the Plan to holders of Second Mortgage Bonds, to unsecured creditors, or, to stockholders of the Old Company.

XVI.

Non-Assenting Holders Of Old Bonds.

Bondholders who shall have withdrawn their bonds from the operation of the Protective Agreement and the holders of Old Bonds who shall not have deposited their bonds under the Protective Agreement or hereunder will not be entitled to participate in the Plan or the benefits thereof to any extent, and will receive only their distributive shares of any balance of the proceeds derived from the sale of the mortgaged property of the Old Company that may remain after the discharge of obligations

and liabilities entitled to prior payment under the terms of the foreclosure decree and orders of Court.

XVII.

~~Terms And Effect Of Participation~~

The Plan and Agreement having been prepared by, and adopted by the unanimous vote or concurrent action of the members of, the Protective Committee and filed with the depositary named in the Protective Agreement, the Plan and Agreement, after the the Protective Committee shall have published notice of its preparation, adoption and filing as required by the Protective Agreement, will be binding upon all holders of certificates of deposit issued pursuant to provisions of the Protective Agreement by the Equitable Trust Company of New York, depositary thereunder, or any of its agents who, within the time limited in the Protective Agreement, do not surrender their certificates of deposit, withdraw the amount of deposited bonds represented thereby and pay their pro rata shares of the indebtedness, compensation, expenses and liabilities of the Protective Committee as fixed by that Committee, all in compliance with the conditions and provisions of the Protective Agreement. All holders of certificates of deposit issued under the Protective Agreement who shall fail so to surrender their certificates of deposit, withdraw their bonds and pay their pro rata share of the indebted-

ness, compensation, expenses and liabilities of the Protective Committee, as provided in the Protective Agreement, shall be conclusively and finally deemed for all purposes to have assented to the Plan and Agreement and all the terms thereof, and, immediately upon the Plan and Agreement's being declared operative by the Reorganization Committee, such holders of certificates of deposit shall be irrevocably bound and concluded thereby.

Holders of Old Bonds who have not already deposited their bonds under the Protective Agreement and who desire to participate in the benefits of the Plan and Agreement must deposit their bonds, accompanied by all coupons maturing on or after March 1, 1915, with The Equitable Trust Company of New York (or some duly authorized agent thereof), as Depositary of the Reorganization Committee on or before February 7th, 1916, receiving therefor certificates of deposit in such form as shall be prescribed by the Reorganization Committee; and the holders of Old Bonds so depositing the same and all holders of certificates of deposit issued to evidence deposits thereof shall be conclusively deemed to be subject to and irrevocably bound by the Plan and Agreement.

Every holder of any of the certificates of deposit issued under the Protective Agreement who, by failure so to withdraw his bonds from the operation of the Protective [1056] Agreement as permitted

thereby, and every holder of Old Bonds, who by deposit of his bonds or coupons with the Reorganization Committee or otherwise as herein provided, shall become bound by the Plan and Agreement and every successor in interest of any such certificate holder or bondholder shall be deemed; if the Plan and Agreement shall be declared operative by the Reorganization Committee, irrevocably to have assigned and transferred to the Reorganization Committee all of the said bonds and coupons so deposited or left upon deposit and all of the claims against the Denver Company susceptible of assignment or transfer (whether in law or in equity) by such Depositor that shall have arisen or exist or that shall arise or exist in favor of such certificateholder or bondholder or any predecessor or successor in interest of either thereof; and the Reorganization Committee is hereby irrevocably authorized by every such certificate-holder and bondholder and every successor in interest of either thereof to transfer, whether directly or through the medium of mesne transfers, all such bonds and claims to any corporation or corporations utilized by it for the purpose, or in the course, of the reorganization, or to transfer a part of the same or an interest therein to one such corporation and another part or interest to another or others, and thereby to vest every such transferee with the full legal title to the bonds or claims or interest so transferred to it and the entire beneficial interest therein.

The Reorganization Committee, if it deem it desirable or convenient; so to do, may require holders of certificates of deposit issued by the Protective Committee who shall not withdraw their bonds as aforesaid to present their said certificates of deposit to the Depositary hereunder or some agent thereof in order that there may be noted thereon the assent of the holders thereof to the Plan and Agreement and ~~the~~ said holders of such certificates of deposit may be further required to execute and deliver assignments, either to the Reorganization Committee or to its nominee or nominees, of all their claims against the Denver Company, but neither any such notation of assent nor any such assignment shall be necessary to give binding effect to any of the foregoing provisions of this Article or to the Plan and Agreement in any particular.

XVIII.

Failure To Declare Plan Operative—Abandonment Thereof.

If the Plan and Agreement either in its original form, or as it may be modified pursuant to the provisions of the annexed Agreement, shall not be declared operative prior to March 15, 1916, or in the event that the Reorganization Committee shall wholly abandon the plan of reorganization, the Old Bonds deposited, or the avails thereof then under the control of the Reorganization Committee, shall

be delivered to the Depositors in amounts representing either respective interests, upon surrender of their several certificates of deposit properly endorsed and payment of their respective shares of compensation, disbursements, expenses, and liabilities of the Reorganization Committee and of the Protective Committee, as fixed by the Reorganization Committee. In such case any moneys paid by a Depositor pursuant to any of the provisions of the Plan or the proceeds thereof remaining after deducting therefrom his share of the compensation, disbursements, expenses and liabilities of the Reorganization Committee and Protective Committee payable by said Depositor and not already reimbursed, shall be returned, but without interest, to the Depositor entitled thereto.

XIX.

Statements Contained In Plan.

This Plan has been adopted by the Protective Committee, acting under the Protective Agreement. The statements contained in the Plan have been compiled from sources believed to be reliable and accurate, but certain of them are necessarily approximate and none is to be construed as a representation or as an inducement to any action or to any omission to act upon the part of anyone. No error or misstatement of any description in the Plan shall constitute ground for the withdrawal of any

Depositor from the Plan and Agreement nor for any complaint with respect to the same or with respect to any consequences arising from having become a party thereto.

XX.

Agreement Of Reorganization.

In order to enable the Plan to be carried out and to give effect to the same the annexed Agreement of Reorganization has been prepared. Whenever the word "Plan" is used herein it shall be deemed to include said Agreement and the provisions thereof, and every depositor who shall assent to the Plan in any manner thereby will become a party to the Agreement, the provisions of which shall govern in any case of conflict between the Plan and the Agreement.

Dated, December 15, 1915. [1057]

AGREEMENT.

Agreement made as of December 15, 1915, between (a) A. M. Hunt, James D. Phelan, George Whittell, David R. Forgan, I. de Bruyn, C. Ledyard Blair, Frederick H. Ecker, Alvin W. Krech, Starr J. Murphy, William A. Read, William Salomon and Richard B. Young, as the Reorganization Committee provided for and named in the foregoing Plan of Reorganization, parties of the first part;

(b) Holders of Certificates of Deposit issued under a Protective Agreement, dated May 1, 1915,

which represent First Mortgage Five Per Cent. Thirty Year Gold Bonds of Western Pacific Railway Company issued under the First Mortgage of said Railway Company dated September 1, 1903, who shall become parties hereto in the manner set forth in the Plan of Reorganization to which this Agreement is annexed or as prescribed herein;

(c) Holders of such First Mortgage Five Per Cent. Thirty Year Gold Bonds who shall become parties hereto in the manner so set forth or prescribed;

Such holders of said certificates of deposit and said bonds constituting the parties of the second part; and

(d) Alvin W. Krech, C. Ledyard Blair, I. de Bruyn, Frederick H. Ecker, David R. Forgan, A. M. Hunt, Starr J. Murphy, James D. Phelan, William A. Read, William Salomon, George Whitrell and Richard B. Young, as the Committee acting under said Western Pacific Railway Company First Mortgage Bondholders' Protective Agreement dated May 1, 1915, parties of the third part:

Witnesseth:

The parties hereto for and in consideration of the conditions and promises hereinafter set forth and for the purpose of mutually assuring the carrying out the foregoing Plan of Reorganization (herein referred to as the "Plan") have mutually agreed and hereby do severally agree, each of the Depos-

itors and the Protective Committee agreeing with the Reorganization Committee and the Depositors agreeing with one another, but each of them agreeing for himself and not for any of the others, as follows:

First.—The terminology adopted in the Plan, as set forth in Article I thereof, is adopted also for the purposes of this Agreement.

Second.—The Plan is hereby adopted and approved and is to be taken as a part of this Agreement with the same effect as though it were embodied herein and the Plan and this Agreement shall be read as parts of one and the same instrument, but in case of conflict between the Plan and this Agreement the provisions of this Agreement shall control. No statement, recital, explanation, estimate, opinion, suggestion or anything else contained in the Plan or Agreement or in the Introductory Statement prefixed to the Plan or in any circular issued or which may hereafter be issued, whether by advertisement or otherwise by or on behalf of the Reorganization Committee, the Protective Committee, or by any of the members of said Committees or by any depositary, sub-depositary or agent of a depositary under the Plan and Agreement or the Protective Agreement or by the Western Pacific Railway Company (the Old Company) or by either or both of the Receivers of the Old Company, or by any other corporation, body or person, is intended or is

to be taken as a representation or warranty or as a condition of or inducement to any deposit under or assent to the Plan and Agreement and no omission, defect, error or misstatement therein shall constitute cause for any complaint or shall release any deposit under the Plan and Agreement or affect or release any assent thereto or anything done thereunder or in connection therewith, except by virtue of the written consent to such release of the Reorganization Committee.

Third.—Participation in the Plan in any respect whatsoever is dependent upon the holders of the certificates of deposit and bonds hereinbefore mentioned becoming parties to the Plan and Agreement in manner as follows:

The Plan and Agreement having been prepared by and adopted by the unanimous vote of the members of the Protective Committee and filed with the depository named in the Protective Agreement, shall, after the Protective Committee shall have published notice of its preparation, adoption and filing as required by the Protective Agreement, be binding upon all holders of certificates of deposit issued pursuant to provisions of the Protective Agreement and all parties whose Old Bonds shall have become subject thereto, who, within the time limited in the Protective Agreement, shall not surrender their certificates of deposit, withdraw the amount of deposited bonds represented thereby and

pay their pro rata shares of the indebtedness, compensation, expenses and liabilities of the Protective Committee as fixed by said Committee, complying in all respects with the conditions and provisions of the Protective Agreement in that behalf; and all holders of certificates of deposit issued under the Protective Agreement and all parties whose Old Bonds shall have become subject thereto, who shall fail so to surrender their certificates of deposit, withdraw their bonds and pay their pro rata share of the indebtedness, compensation, expenses and liabilities of the Protective Committee and all of their successors in interest shall be conclusively and finally deemed for all purposes to have assented and become parties to the Plan and Agreement, and immediately upon the Plan and Agreements being declared operative by the Reorganization Committee, such holders of certificates of deposit and parties whose Old Bonds shall have become subject to the Protective Agreement shall be irrevocably bound and concluded thereby.

Holders of Old Bonds who have not already deposited their bonds under the Protective Agreement and who desire to participate in the benefits of the Plan and Agreement shall deposit their bonds, accompanied by all coupons maturing on or after March 1, 1915, with The Equitable Trust Company of New York (or some duly authorized agent thereof), as the Depositary under the Plan and Agree-

ment, on or before February 7th, 1916, receiving therefor certificates of deposit in such form as shall be prescribed by the Reorganization Committee; and the holders of Old Bonds so depositing the same and all holders of certificates of deposit issued to evidence such deposits shall be conclusively deemed to be subject to and irrevocably bound by and to have become parties to the Plan and Agreement.

The Reorganization Committee may in its discretion, permit the holders of Deposited Bonds to become parties to the Plan and Agreement without the actual deposit of their bonds, and all bondholders so becoming parties shall be embraced within the term "Depositors" whenever used in the Plan or in this Agreement. The Reorganization Committee may authorize the acceptance for deposit under the Plan and Agreement of Old Bonds without such of the interest coupons appertaining thereto as the Committee may specify, and also may authorize the acceptance for deposit under the Plan and Agreement, upon such terms and conditions as the Reorganization Committee in its absolute [1058] discretion may prescribe, of interest coupons without the bonds to which they appertain.

Every holder of any of the certificates of deposit issued under the Protective Agreement and every party whose Old Bonds or coupons shall have become subject thereto, who by failure to withdraw his bonds or coupons from the operation of the Pro-

pective. Agreement as permitted thereby, and every holder of Old Bonds or coupons, who by deposit of his bonds or coupons or otherwise as herein provided, shall become a party to the Plan and Agreement and every successor in interest of any such Depositor shall be deemed, if the Plan and Agreement shall be declared operative by the Reorganization Committee, irrevocably to have assigned and transferred to the Reorganization Committee all of the bonds and coupons so deposited or left upon deposit and all of the claims against the Denver Company susceptible of assignment or transfer (whether in law or in equity) by such Depositor that shall have arisen or exist or shall arise or exist in favor of or be enforceable by or on behalf or for the benefit of such Depositor or any predecessor or successor in the interest thereof; and in such event the Reorganization Committee are hereby vested as trustees of an express trust with the legal title to all of the Deposited Bonds and coupons and all claims against the Denver Company deemed to be transferred as aforesaid; and the Reorganization Committee is hereby irrevocably authorized by every such Depositor to utilize all or any of such bonds and of the coupons appertaining thereto and other deposited coupons and any part of any amount payable upon any thereof in satisfying the purchase price to be paid for any of the property of the Old Company purchased by or at the instance of the Reor-

ganization Committee for the purposes of the reorganization and to transfer, whether directly or through the medium of any mesne transfers, all such bonds and coupons (or any interest therein or claims based thereon remaining after the same shall have been utilized in payment of such purchase price) and all such claims against the Denver Company to any corporation or corporations used by the Reorganization Committee for the purpose or in the course of the reorganization provided for in the Plan, or to transfer the same in part to one such corporation and in part to another or others, and thereby to vest every such transferee with the full legal title to the bonds or claims or interest in bonds or claims so transferred to it and the beneficial interest therein.

Certificates of Deposit issued under the Protective Agreement and representing Old Bonds which shall become subject to the Plan and Agreement as herein provided, shall entitle the holders thereof to the same rights and render them subject to the same obligations as if the Old Bonds represented thereby had been deposited under the Plan and Agreement and certificates of deposit had been issued therefor hereunder. The Reorganization Committee, if it deem it desirable or convenient so to do, may require holders of certificates of deposit issued under the Protective Agreement who shall not withdraw their bonds as aforesaid to present their said certificates

of deposit to the Depositary hereunder in order that there may be noted thereon the assent of the holders thereof to the Plan and Agreement and the said holders of such certificates of deposit may be further required to execute and deliver to said Depositary assignments, either to the Reorganization Committee or to its nominee or nominees, of all claims against the Denver Company arising or to arise as aforesaid.

Certificates of deposit issued for Deposited Bonds under the Protective Agreement or hereunder and all interests and rights represented thereby, shall be transferable; but only subject to the terms and conditions of the Plan and Agreement and in such manner as the Reorganization Committee shall prescribe or approve. Upon any such transfer all rights of the transferor evidenced by such certificates, and as well all amounts paid upon the purchase price of New Bonds purchased by virtue of the interest in Deposited Bonds represented by such certificate of deposit, shall pass to the transferee and the transferees and subsequent holders of any such certificate of deposit shall for all purposes be substituted in place of prior holders subject to this Agreement and the acts of the original Depositor shall be binding upon and be deemed the acts of every such transferee. By accepting or holding any certificate of deposit, every recipient or holder thereof (whether the same be issued in his name or otherwise) shall become thereby a party to the Plan and Agreement with the same force and effect as though an actual

subscriber thereof and shall thereby authorize the Reorganization Committee to affix his signature thereto.

The certificates of deposit and any interim, or other certificates or receipts issued by or for the Reorganization Committee or the Protective Committee or any depositary of either may be treated by the Reorganization Committee and the Depositary as negotiable instruments, and the bearer or, if registered, the registered holder for the time being may be deemed by the Reorganization Committee and the Depositary to be the absolute owner thereof and of all of the rights of the original depositor and of every holder, and neither the Reorganization Committee nor the Depositary shall be affected by any notice to the contrary.

All Depositors agree to execute from time to time on demand of the Reorganization Committee any and all such powers of attorney as said Committee in its discretion shall deem necessary or advisable, and also to execute from time to time on demand of the Reorganization Committee any and all such transfers and assignments or writings required for vesting or evidencing the complete ownership of the Old Bonds represented by certificates of deposit and the claims against the Denver Company as the Reorganization Committee may determine.

Fourth.—February 7, 1916, shall be the limit of time within which bondholders shall have the right to deposit their Old Bonds and within which they

may become parties to the Plan and Agreement, but the Reorganization Committee in its discretion either generally or in special instances, may extend such time or renew the period or periods fixed or limited for such deposit, such extension of time to be upon such terms and conditions, if any, as the Reorganization Committee may see fit to prescribe. Holders of Old Bonds who do not deposit the same or become parties hereto in the manner herein provided within the periods respectively limited or fixed therefor, as aforesaid, and holders of certificates of deposit issued under the Protective Agreement who shall exercise their right of withdrawal as provided in the Protective Agreement, will not be entitled to deposit their bonds or to become parties to this Agreement or to share in the benefits of the Plan and Agreement and shall acquire no rights hereunder, except upon obtaining the express consent in writing to such deposit and participation of the Reorganization Committee, which may, in its absolute discretion, and upon such terms and conditions as it may see fit, withhold or give such consent.

Fifth.—The Reorganization Committee shall be the sole and final judge as to when and whether sufficient Old Bonds shall have become subject to the Plan and Agreement to and whether other conditions do warrant it in declaring the Plan operative and in attempting to carry the same into effect, and it shall have power whenever it shall deem proper

(notwithstanding anything that may have been done); to abandon the Plan or any part thereof. The Reorganization Committee by the affirmative vote of three-fourths of its members may modify the Plan in whole or in part (and even if such modification shall amount to the substitution of a new Plan therefor) and any such modification or any modified plan may deal with and provide for any or all matters that under the Protective Agreement might have been dealt with or provided for in the Plan and Agreement. After any modification by a like vote the Reorganization Committee may restore to the Plan any abandoned part or parts thereof or discard any such modification and the Committee thereafter may seek to carry the Plan into effect as fully as if such part or parts had not been abandoned or such modification made. It may attempt to carry the Plan into effect rather than abandon or modify the same, even though it be manifest that in attempting to carry out the Plan it must depart from the original Plan or some part thereof. Any modification when made by the Reorganization Committee as above provided, shall thereupon become and be part of the Plan and Agreement, but in case of any intentional modification of the Plan a statement of such modification shall be filed with the Depositary; and in case of any such intentional modification which shall alter the Plan in any substantial respect, a statement of such modification shall be filed with

the Depositary and notice of the fact of such filing shall be given as hereinafter provided in Article Fifteenth and within four weeks after the first publication of such notice, all Depositors may surrender their respective certificates of deposit, in negotiable form, to the Depositary and may withdraw their Deposited Bonds or the avails thereof then under the control of the Reorganization Committee, to the amounts properly apportionable to such certificates, respectively; provided, however, in every case of such withdrawal the Depositor shall make payment of his share of the compensation, disbursements, expenses and liabilities of the Reorganization Committee and the Protective Committee, as fixed by the Reorganization Committee. Every such Depositor so withdrawing shall thereupon, without any further act, be released from the Plan and Agreement and shall cease to have any rights hereunder, and the Deposited Bonds represented by the certificates of deposit so surrendered, or the avails thereof then under the control of the Reorganization Committee, as the case may be, shall thereupon be released herefrom, and the exercise of such right of withdrawal shall release and discharge the Reorganization Committee and the Depositary from all liability of every character to every such withdrawing Depositor, except so far as provision is hereinafter made in regard to cases where money has been paid in under the Plan. Every Depositor not so withdrawing with-

in such four weeks after the first publication of said notice shall be deemed to have assented to the proposed modification and whether or not otherwise objecting shall be bound thereby as fully and effectively as if he had actually assented thereto. Any modifications made as herein provided shall be part of the Plan and Agreement, and all provisions hereof concerning and references herein to the Plan shall apply to the Plan as so changed and modified. If, nevertheless, the Plan shall be modified and in consequence thereof Deposited Bonds shall be withdrawn as permitted hereby and thereafter the Plan shall again be modified so as to restore it to the form or so that it shall have substantially the effect of the Plan as it existed immediately prior to such first modification, the Reorganization Committee shall provide that all bonds that have been so withdrawn may again be deposited hereunder within some reasonable period to be prescribed by the Committee.

The Reorganization Committee may construe the Plan and Agreement and its construction thereof or action thereunder in good faith shall be final and conclusive. It may supply any defect or omission or reconcile any inconsistency in such manner and to such extent as shall be deemed by it expedient to carry out the Plan properly and effectively, and it shall be the sole judge of such expediency. This agreement is in all respects to be liberally construed.

to enable the Reorganization Committee to carry into effect the Plan, whether in the form hereto attached or as changed or modified pursuant to the provisions hereof. The Reorganization Committee may at any time, and from time to time, file with the Depositary a statement or statements specifying the amount of securities which any company utilized in the reorganization may or shall issue for the purpose of carrying out the Plan and Agreement or specifying in detail the terms upon which any holders of claims against the Old Company not provided for in the Plan may become parties to the Plan and Agreement or specifying the amount of cash or securities which shall be deliverable to any person or corporation for the purpose of carrying out the Plan and Agreement, the amount of which is not now expressly specified therein, and any other statement expressing authority to do anything which in its opinion is expressly or impliedly authorized by the Plan: and such statement or statements shall, when filed and without further notice, be a part of the Plan and Agreement as if contained in the original Plan or in this Agreement.

In case the Reorganization Committee shall not prior to March 15, 1916, declare the Plan operative (either as originally filed or as the same shall be modified pursuant to the provisions hereof), or in case the Reorganization Committee shall abandon the entire plan of reorganization, the Deposited Bonds or the avails thereof then under the con-

control of the Reorganization Committee shall be delivered to the several Depositors in amounts representing their respective interests hereunder, upon surrender of their several certificates of deposit in negotiable form, and payment of their respective shares of the compensation, disbursements, expenses and liabilities of the Reorganization Committee and of the Protective Committee, as fixed by the Reorganization Committee:

The Reorganization Committee may, whenever and upon such terms as it shall deem proper, accept from any Depositor the surrender of any certificate of deposit and, upon receipt thereof and payment of such Depositor's share of the compensation, disbursements, expenses and liabilities of the Reorganization Committee and of the Protective Committee, as fixed by the Reorganization Committee, it may surrender and deliver Deposited Bonds of the amount in such certificate stated (or the avails thereof then under its control) which thereupon shall be deemed to be released and discharged from and no longer to be entitled to any of the benefits of the Plan and Agreement.

In every case of withdrawal or release from the Plan and Agreement of Old Bonds or their avails, or of final abandonment of the entire plan, the Reorganization Committee shall apportion to the Deposited Bonds the shares of the compensation, disbursements, expenses and liabilities of the Reorganization Committee and of the Protective Committee, in the opinion of the Reorganization Com-

mittee fairly chargeable thereto, and any such apportionment made by the Reorganization Committee shall be binding upon all Depositors and shall be a charge upon the Deposited Bonds and the avails thereof. The word "liabilities" when used in this Agreement shall be deemed to include any sums due to any Syndicate or Syndicates organized as contemplated by the Plan and Agreement in repayment of sums theretofore paid or advanced by it or them for the purposes of the reorganization, and also all sums of money, securities or other property borrowed or owed or advanced by the Reorganization Committee, and all sums as security for the payment of which the Reorganization Committee shall have pledged or charged securities or property under its control as authorized hereby. In case a Depositor, as a condition of the withdrawal of securities, shall be required to contribute toward any advances made or the repayment of any amounts invested in property or securities, he shall be entitled to receive from the Reorganization Committee a certificate evidencing his interest in such advances or investment. In any case of such withdrawal, release or abandonment of the entire plan moneys paid by any withdrawing [1060] Depositor pursuant to the provisions of the Plan and Agreement or the proceeds thereof remaining after deducting therefrom the share of compensation, disbursements, expenses and liabilities incurred by the Reorganization Committee and of the Protective Committee payable by such Depositor and not

already reimbursed, shall be returned, but without interest, to the Depositor entitled thereto. In every such case, any moneys actually collected by the Reorganization Committee on account of Deposited Bonds or coupons or claims against the Denver Company shall be accounted for by the Reorganization Committee. The Reorganization Committee shall not, however, be held responsible for loss of any money disbursed or expended by it for the purposes of the Plan and Agreement nor for any depreciation in value of any Old Bonds, property or securities, and Depositors shall have no claim for the return of any Old Bonds or any moneys except to the extent of their equitable shares of such bonds or moneys or the avails thereof at the time remaining in the hands of, or under the control of, the Reorganization Committee. Notwithstanding any provisions of this agreement to the contrary, the pecuniary liability of the Depositors shall in every case (except with respect to payment for New Bonds purchased by them) be confined to a charge upon the Deposited Bonds or their avails and the claims and other property and securities, if any, under the control of the Reorganization Committee and no liability in excess thereof shall be assessed against the Depositors, but the Reorganization Committee, its successors and assigns, shall have a lien upon the Deposited Bonds and their avails and the claims and other property and securities and the moneys, if any, under the control of the Reorganization Committee for its compen-

sation and the compensation of the Protective Committee and for all expenditures and advances made and liabilities incurred by it or by the Protective Committee.

Sixth.—Upon the consummation of the Plan, Depositors shall be entitled, upon compliance with all of the terms and conditions of the Plan and Agreement, including payment of such sums of money, if any, as may be required to be paid pursuant thereto, and upon surrender of their certificates of deposit in negotiable form, to receive the new securities to which they shall respectively be entitled under the Plan and Agreement, but only as and when the same shall be issued and ready for delivery.

Seventh.—Subject to the provisions in that behalf contained in the Plan, the times within which the cash payable by Depositors must be paid for New Bonds shall be fixed by the Reorganization Committee; and, enter generally or in special instances, and on such terms and conditions, if any, as it may see fit, the Reorganization Committee may extend or may renew any period or periods so fixed or limited. The cash so payable by Depositors must be paid to the Depositary, or some duly authorized agent thereof, for account of the Reorganization Committee, and must be receipted for by the Depositary, or some such duly authorized agent on the certificates of deposit in respect of which such cash is paid, upon presentation of said certificates of deposit to the Depositary or such agent or on new

certificates of deposit to be issued in exchange for certificates so presented. All Depositors who shall elect to purchase New Bonds as permitted by the Plan and Agreement severally and respectively agree that prompt payment of the cash payable by them, respectively, on the terms of the Plan and Agreement, is an essential condition to their acquisition, respectively, of New Bonds or stock under the Plan, and that any such Depositor who shall fail to make prompt payment of any cash so payable, as provided in the Plan or in this Agreement, within any period fixed or limited for such payment in the Plan or this Agreement or by the Reorganization Committee, forthwith and without other notice or action shall cease to be entitled to receive any of the new securities provided for in the Plan or any benefits hereunder, and that so such Depositor shall be entitled to the return of any Deposited Bonds or the repayment of any cash theretofore paid by him; and that in such event the Reorganization Committee, in its discretion, without any proceedings either at law or in equity and without demand or notice, and in such manner and on such terms as it shall deem expedient, may at public or private sale or sales, for the account of such defaulting Depositor, dispose of any or all of the interests or rights to which such defaulting Depositor would otherwise have been entitled, including all of the New Bonds and all shares of stock in the Holding Company to which such Depositor would otherwise have been entitled and also

all Old Bonds and claims against the Denver Company, or the avails thereof, represented by his certificate of deposit, and may apply the proceeds of such sale or sales to payment of the costs and expenses thereof and of any proceeding looking thereto and to the satisfaction of the obligation of such defaulting Depositor hereunder and under his agreement to purchase New Bonds (paying the over-plus if any to such Depositor), and thereupon all interest and right of such Depositor in any of the securities or any property or rights so disposed of or any avails thereof shall cease and determine. At any public sale hereunder of any securities or of any such interests or rights, the Reorganization Committee or any other party hereto or anyone in any manner connected with said Committee or any such party may become the purchaser thereof for their or his own benefit without accountability. The Reorganization Committee, however, in its discretion, may waive such default, may accept payments of overdue instalments due from any Depositor at any time with or without penalty, and may also waive or limit any penalty prescribed either in the Plan or Agreement or in pursuance thereof.

Eighth.—If and when the Plan shall be declared operative by the Reorganization Committee, the Depositors, each for himself, hereby make, constitute and appoint, the parties of the first part and their successors, constituting the Reorganization Committee for the time being as herein provided, or a ma-

jority of them, the true and lawful attorneys of them and each of them for the purposes herein set forth, with full power and authority to act for and in the name, place and stead of each of them, and with full power of substitution, from time to time, and of revocation. The Depositors hereby irrevocably request the Reorganization Committee to endeavor to carry the Plan into practical operation in its entirety, or with changes therein as hereinbefore provided, or with such additions, exceptions and modifications as shall be adopted as herein provided, and the Depositors hereby agree that the Reorganization Committee shall be, and it hereby is, vested with all the rights, powers and authority necessary or proper to enable it to carry out the Plan and Agreement in its entirety, or with such additions, exceptions and modifications.

Ninth.—The Reorganization Committee is authorized in its discretion to demand, receive and collect all amounts that may at any time be due or owing or payable in respect of the Deposited Bonds, any claims against the Denver Company or other securities or claims acquired by the Reorganization Committee as permitted hereby and whether such sums be payable for principal, interest or otherwise; to elect or cause any trustee or trustees under the mortgage securing the Old Bonds, or any other mortgage or trust indenture, if the foreclosure of such mortgage or indenture shall in its judgment be advisable for the purposes of the reorganization, to

elect to have the [1061] principal of the Old Bonds or of the obligations secured by any such other mortgage or trust indenture become due and payable and at pleasure revoke or withdraw such election or cause the same to be revoked or withdrawn; to request or instruct any such trustee or trustees to prosecute or foreclose or to take any other proceedings for the enforcement of the Old Mortgage or the Old Bonds or any such mortgage or trust indenture or any bonds or obligations secured thereby, or to exercise the powers or any of them conferred by the Old Mortgage or any such mortgage or indenture and generally to make any such requests and demands and give any such instructions upon or to any such trustee or trustees and to confirm and give to such trustee or trustees all such powers as in the judgment of the Reorganization Committee may be advantageous in carrying out the Plan; to enforce or cause to be enforced the claims against the Denver Company under Contract B or any guaranties endorsed upon Deposited Bonds or in favor of the Old Company; to institute or to become parties to, or to dismiss or cause to be dismissed any legal proceedings; to compromise any litigation now or at any time existing or threatening, in whole or in part (except that claims against the Denver Company under Contract B or guaranties endorsed upon any of the Old Bonds shall not be compromised by virtue of such power to compromise litigation), with plenary power to enter into any agreement tending to or deemed by it in

its discretion likely to promote the consummation of the Plan and Agreement; to give all agreements or bonds of indemnity or other bonds, and therewith to charge the Deposited Bonds and their avails, any property purchased or new securities to be issued hereunder or any or any part of any thereof; to acquire, upon such terms and conditions and at such prices as it may deem fit, any property deemed by it expedient for the purposes or requirements of the Plan; to do whatever in the judgment of the Reorganization Committee may be expedient to promote or procure the sale or purchase as an entirety, or sale or purchase at separate sales or in separate parcels, of any property of the Old Company and to sell and dispose of, upon such terms and for such consideration as the Reorganization Committee may deem fit, any portion of the property of the Old Company or of any property acquired by the Committee or in its behalf that it shall deem unnecessary for the purposes of the reorganization; to bid or to cause anyone else to bid or to refrain from bidding at any sale, either public or private, of any property whatever, whether owned or controlled by the Old Company or otherwise, to adjourn or consent to the adjournment of any sale or sales, and at, before or after any sale or purchase to arrange and agree for the resale of any portion of the property which it may decide to sell rather than to retain; to make any offer; to cause or permit anyone else to offer, to purchase all or any portion of the property of the Old Company or any other property, and, as part of any such offer or otherwise, to offer

to pay and to pay, or to cause or permit to be offered or paid, any amounts in cash or otherwise to any bondholders, creditors or other person or persons; to hold any property purchased either in its name or in the name of any person or corporation approved by it, and to apply Old Bonds held by it hereunder or their avails in satisfaction of any bid or pursuant to any offer or contract, whether made by it or any other person or corporation approved by it, or towards obtaining funds for the satisfaction or performance thereof. The amount to be paid or offered or bid by the Reorganization Committee; or which it may cause to be paid or offered or bid, for any property shall be absolutely discretionary with it and in case of a sale to others of any property, the Reorganization Committee may receive out of the proceeds of such sale or otherwise any distributive shares payable on account of Deposited Bonds. The Reorganization Committee may enter into any agreement or arrangement for decrees or orders for facilitating or hastening the course of litigation or tending towards or deemed by the Committee likely to promote the consummation of the Plan: it may apply for or consent to the appointment or reappointment of any receiver or receivers of the Old Company or of any corporation in which the Depositors as such may be interested or against which it may hold demands, or of the property of any such corporation or the extension of any receivership, or it may apply for or consent to the removal of any receiver or receivers

and the substitution of one or more other receivers or the termination of any receivership and the delivery of the property subject thereto to its owners; it may consent to the issue and sale of receiver's certificates or other obligations and to the securing of any receiver's certificates so issued by such liens or charges upon all or any of the property of the Old Company and having such priorities as it may approve. It may lend money to the Receivers of the Old Company or to the Holding Company or the Operating Company and loan money in its discretion for any of the purposes of the Plan and Agreement.

The Reorganization Committee may also borrow and use such sums of money on such terms and subject to such conditions as in its discretion it may deem wise or necessary in order to carry out the Plan or to protect the interests of the Depositors and for that purpose and to secure such sums as may be so borrowed with interest it may pledge, hypothecate or otherwise create charges upon any or all of the Deposited Bonds or their avails, property purchased or the new securities to be created as contemplated by the Plan and all moneys paid by the Depositors or by any Underwriting Syndicate. In case of any such borrowing, whether upon pledge or not, the Reorganization Committee may give to the lender for the sum so borrowed the promissory note or notes of the Reorganization Committee signed on behalf of such Committee by its Chair-

man or otherwise as may be authorized by the Committee.

The Reorganization Committee shall have the sole control, discretion and management of the Plan and its execution. It may make such expenditures and incur such obligations and liabilities, and do such acts as in its absolute discretion it may deem judicious and proper in order to carry out fully and effectively the purposes of the Plan and of this Agreement, and it may, or the Protective Committee with its consent may, exercise any powers of the Protective Committee under the Protective Agreement. Statements in the Plan and Agreement of the intended arrangements or as to the methods to be employed in effecting the details of the proposed reorganization shall not limit the discretion of the Reorganization Committee, but may be modified or changed or departed from or entirely abandoned as often as the Committee shall deem advisable, it being intended that the Reorganization Committee shall have full discretion and power to use whatever means it shall deem most convenient and advisable for accomplishing the reorganization, the acquisition of any property, directly or indirectly, and the issue and disposition of the new securities and the other objects contemplated by the Plan and Agreement. Anything which anywhere in the Plan and Agreement it is provided the Reorganization Committee may do or allow to be done it may do or allow to be done by or through such agents or agencies as it may determine, or by or through others

with its approval or consent or acquiescence, or it may contract with any other person or corporation that any such thing shall be done or permitted to be done.

The Reorganization Committee in carrying out the Plan may organize or procure to be organized one or more companies or it may adopt or use any companies whether now existing or not. It may make or cause to be made consolidations, mergers, sales, purchases, leases, guaranties or other arrangements by or between any such companies, any of the companies mentioned in the Plan or any companies thereby permitted to be employed in connection with the reorganization; it may make or cause to be made conveyances and transfers of the property or securities acquired by it or with its appro- [1062] val, and may cause the ownership of all or any property by the Operating Company or the Holding Company to be either direct ownership or ownership through the ownership of bonds or stocks or both of any other company, and may cause the New Mortgage to be either a direct lien upon any particular property or a lien upon the bonds or stocks or both of any company owning such property; and all of the provisions of the Plan and Agreement shall equally apply to and in respect of any physical properties embraced in the reorganization and to and in respect of securities representing any such property, it being intended that for all purposes of the Plan and Agreement any such property and any securities representing such property may be treated

or accepted by the Reorganization Committee in its discretion as substantially identical. It may take or allow to be taken such other proceedings as it may deem proper for the purpose of the creation of the new securities provided for in the Plan and Agreement and the carrying out of any of the provisions thereof. The Reorganization Committee may pay the expense of listing certificates of deposit or any new securities to be issued under the Plan and Agreement upon the New York Stock Exchange or elsewhere, and any taxes, fees or charges payable in connection therewith, and as well any taxes, fees or charges imposed by any public authority wherever situated in respect of the authorization, creation, issue, transfer or distribution of all or any of the new securities or other securities under the control of the Reorganization Committee, as provided or permitted by the Plan and Agreement, and it may pay or discharge any taxes, fees or governmental charges payable in connection with the deposit, use, assignment or transfer of Old Bonds under or in pursuance of the Plan and Agreement.

The Reorganization Committee may prescribe or approve the form and terms of all charters and by-laws of the Operating Company and of the Holding Company and of any other corporations that shall be utilized in the reorganization, and all certificates of stock and bonds at any time to be issued and the New Mortgage and all other instruments to be executed, and may make contracts with regard to the form thereof. The Reorganization Committee may

create and provide for all necessary trusts and may appoint trustees thereunder. The Reorganization Committee may in its discretion set apart and hold in trust or permit or cause to be set apart and held in trust with any trust company or otherwise any part of the new securities to be issued and any cash which may be received from the Depositors or any syndicate or from sales of New Bonds or stock or otherwise as it may deem suitable for the purpose of securing the application thereof to any of the purposes of the Plan and Agreement.

It may make or cause to be made any underwriting agreement with any syndicate or otherwise which it may deem advisable to insure or promote the carrying out of the Plan and Agreement or any portion thereof, including not only any agreement or arrangement for the sale or the underwriting of the sale of New Bonds and of stock to be issued pursuant to the Plan and Agreement, but as well any agreement or arrangement for the purpose of obtaining money for the purposes of the Plan whereby the new stock to which holders of such Old Bonds who shall not be Depositors would have been entitled if they had become parties to the Plan and Agreement or any other new securities authorized by the Plan and Agreement and not otherwise appropriated or all such securities shall be sold or the sale thereof shall be underwritten, and they may provide for the payment to any such syndicate or any syndicate organized pursuant to the authority contained or as stated in the Plan and Agree-

ment of reasonable compensation and likewise for the payment of compensation to bankers or managers whom the Protective-Committee has procured or the Reorganization Committee may procure to organize or with whom they may agree for the organization of any such syndicate; and for the performance of any agreement entered into by the Protective Committee or by it, the Reorganization Committee may charge the Deposited Bonds, the property purchased and the new securities to be issued hereunder.

The Reorganization Committee may dispose of or consent to the disposition of any of the new securities not required for delivery to Depositors or to the Underwriting Syndicate, or the securities of any company which shall be utilized in the reorganization not reserved under the Plan for specific uses; and it may use, or allow to be used, the proceeds thereof, if required for the purpose of carrying out the reorganization, in such manner as it may deem expedient and advisable for the purposes of the Plan.

The Reorganization Committee shall have power to make equitable provision for any case of lost or destroyed bonds, certificates of stock, certificates of deposit or other securities and to provide for and make such issues of scrip or convertible securities as it shall deem expedient properly to represent any fractional interest in the New Bonds or the stock to be issued under the Plan, and it may in its discretion settle for and adjust any such fractional interest in cash. In case it shall deem it ad-

visible for any reason it may issue or authorize the issue of temporary or interim certificates to represent new securities.

All moneys at any time held under the Plan and Agreement shall be subject to the order of the Reorganization Committee, which shall apply the same or cause or permit the same to be applied for any of the purposes of the Plan as from time to time may be determined by it; its determination as to the propriety and purpose of any such application shall be final, and nothing in the Plan shall be understood as limiting or requiring the application of specific moneys to specific purposes. The Reorganization Committee may, if in its judgment such course shall be in the interest of the Operating Company or the Holding Company, abandon any particular purpose or purposes for which money is appropriated in the Plan and, within the limitations and subject to the conditions expressly prescribed in Article V. of the Plan, may provide for the application of any of the moneys, to be raised as contemplated by the Plan, to any of the purposes mentioned in said Article V. and in such amounts or proportions, respectively, as may be determined by the Committee.

The Reorganization Committee may acquire, pay, compromise, settle, surrender or release any obligations or indebtedness of, or claims against the Old Company, or any claims or demands against or liens or charges upon any property of the Old Company, or upon any other property which the Reorganization Committee may deem it ad-

visible for the Operating Company or the Holding Company to acquire, or any claims or demands whereby, or by reason whereof, any such property may be encumbered or the title thereto affected, or any Receiver's certificates or other obligations or liabilities incurred or which may be issued or incurred by the Receivers of the Old Company, and for such purpose may use any cash provided by the Plan or any new securities which it is provided in the Plan may be issued in the course of the reorganization and which are not otherwise appropriated in the Plan. It may surrender or cancel, or consent to the surrender or cancellation of or may adopt or consent to the adoption or renounce or consent to the renunciation of any agreement to which the Old Company is a party or the Receivers of the Old Company are parties. It may compromise, settle, surrender or release or consent to the compromise, settlement, surrender or release of any claims of the Old Company or of its Receivers (but claims against the Denver Company under Contract B or guaranties endorsed on Old Bonds acquired from the Depositors under the Plan and Agreement may be compromised or settled by the Reorganization Committee, if at all [1063] only by virtue of the power conferred and within the limitations prescribed in Article II. of the Plan and as provided hereinafter in this Article Ninth).

Generally the Reorganization Committee may make or ratify or permit to be made or ratified contracts with any person, syndicate, committee or

corporation in respect of any matter connected with the Plan and Agreement.

The reorganization Committee may employ counsel, depositaries, agents and all necessary assistants and may incur, agree with respect to and discharge any and all expenses and obligations which it deems reasonable for the purposes of the Plan or for carrying out or attempting to carry out the same, all expenses in connection with the preparation of the Plan and Agreement, the issue of certificates, all expenses of organizing the Operating Company and the Holding Company and any other company or companies utilized in connection with the reorganization, the issue and transfer of property and securities, legal expenses, expenses for advertising and printing, all expenses of or incident to the receivership of the Old Company and the foreclosure of the mortgage securing the Old Bonds, all expenses incurred hereunder or under the Protective Agreement the compensation and obligations and liabilities of the Protective Committee, and all other expenses in any manner connected with the Plan and Agreement or which the Committee may deem it expedient to incur or pay in undertaking to promote or in effecting any of the purposes thereof. The Committee shall be the sole judge of the propriety of any and all expenses and of the amount thereof.

The Reorganization Committee may proceed under the Plan and Agreement or any part thereof with or without judicial sale, and in case of judicial sale it may exercise any power either before or after sale. Any action contemplated in the Plan and

Agreement may be performed before or after reorganization, and any such action may be taken by the Reorganization Committee or by anyone approved by it at any time when it shall deem the reorganization advanced sufficiently to justify such course and as it may deem necessary the Reorganization Committee may defer or permit to be deferred the performance of any provision of the Plan or Agreement or may commit such performance to the Operating Company or the Holding Company or such other person, persons or corporation as it shall determine and may cause any such company to pay any indebtedness authorized or incurred by the Reorganization Committee or otherwise in furtherance of the Plan and to assume any obligations which in its judgment may be necessary or proper to carry out the Plan and Agreement; and pending the completion of the reorganization, if in its judgment occasion shall require, the Reorganization Committee notwithstanding any other provision of this Agreement, may exercise, but only upon the affirmative vote or concurrent action of three-fourths of all its members, any of the powers which by the terms of the Plan are to be vested in or may be exercised by the Holding Company or by the Operating Company.

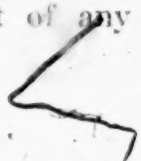
In the event that any agreement or arrangement providing for compromise or settlement of claims against the Denver Company shall be made in the exercise of the power last conferred, the same shall be made, and shall be subject to, the condition that such compromise or settlement shall be submitted to

the Depositors, registered as such upon the books of the Depositary, and shall not be disapproved by more than one-third in amount thereof. In the event of the making of any such agreement or arrangement, a statement of the proposed compromise or settlement, setting forth the terms thereof, shall be filed with the Depositary and with each of its agents then authorized to accept deposits under the Plan and Agreement, which statement shall be subject to inspection by Depositors, and notice of the filing thereof shall be published as provided in Article Fifteenth hereof. Any Depositor desiring to disapprove such compromise or settlement may within four weeks from the date of the first publication of said notice, file with the Depositary or with any of its said authorized agents, a writing stating that he disapproves the same. Any Depositor who shall fail so to file such written disapproval within the time so limited shall be conclusively deemed to have consented to such compromise or settlement notwithstanding any objection thereto that he may make in any other manner; and such compromise or settlement shall be binding upon all the Depositors as fully as if every Depositor had expressly consented thereto unless more than one-third in amount of all of the Depositors, registered as such upon the books of the Depositary, shall in writing disapprove the same in the manner and within the period aforesaid. In case more than one-third in amount of said Depositors shall so disapprove such compromise or settlement, the same shall be without any force

whatsoever and shall not be consummated by the Reorganization Committee.

Tenth.—The Protective Committee and the Depositary under the Protective Agreement, upon notice from the Reorganization Committee that the Plan has become operative, will deliver to or hold subject to the order of the Reorganization Committee, and will assign, transfer and deliver as shall be directed by any such order, all of the Deposited Bonds and coupons subject to the Protective Agreement; the holders whereof or of certificates of deposit wherefor shall have become bound by the Plan and Agreement, all claims against the Denver Company that may have been subject to the Protective Agreement and all avails of any such bonds or claims and all other securities and benefits whatsoever subject to the control of the Protective Committee; and the Protective Committee, with respect to all such Deposited Bonds and coupons, claims, securities and benefits, shall at any time exercise any or all of its powers or rights under the Protective Agreement, as may be requested by the Reorganization Committee, for the purpose of carrying out any of the provisions of the Plan and Agreement or the intent or any of the purposes thereof.

Eleventh.—The Reorganization Committee undertakes in good faith to endeavor to execute the Plan, either in its original form or as the same shall be modified as provided herein, but neither the Reorganization Committee nor the Protective Committee assumes any personal responsibility for the execution thereof or for the result of any steps



taken or acts done for the purposes thereof. The Reorganization Committee may act by any sub-committee or Board of Managers or by other agents, and may delegate authority to any such sub-committee Board of Managers or agents to carry out the provisions of the Plan, and the members of any such sub-committee or Board of Managers or any such agent may be allowed reasonable compensation for services. Neither the Reorganization Committee nor the Protective Committee nor any member of either of said committees, nor the Depositary, shall be personally liable for any act or omission of any agent or employee selected by them, or any of them, nor for any action taken or not taken in good faith in the belief that any Deposited Bond or New Bond or certificate of stock or of deposit or other instrument or any signature is genuine or effective, nor for anything done or not done under the advice of counsel, nor for any error of judgment nor mistake of law or fact, nor for anything except its or his own individual wilful misconduct or bad faith, and neither the Reorganization Committee nor the Protective Committee nor any member of either of said committees nor the Depositary shall be personally liable for the acts or defaults of any other person or body.

The accounts of the Reorganization Committee are to be filed with the Board of Directors of the Holding Company. The accounts when approved by

[1964]

disinterested public accountants to be designated and employed by said Board of Directors shall be final, binding and conclusive upon all parties having

any interest therein, and upon such approval whenever given the Reorganization Committee shall be discharged and any liability upon its part shall cease. The acceptance of new securities by any Depositor shall estop the person accepting the same from questioning the conformity of such securities in any particular with any of the provisions of the Plan, and the acceptance of new securities by the holders of a majority in amount of the Depositors shall so estop all Depositors and constitute full ratification of all of the accounts, acts and proceedings of the Reorganization Committee and the Protective Committee and a release and discharge of the Reorganization Committee and the Protective Committee and all of the members of each thereof and the Depositary from all liability and accountability of every kind, character and description whatsoever.

Twelfth.—The Reorganization Committee, by vote of three-fourths of its members as the Committee shall then be constituted, may at any time increase the number of members constituting the Reorganization Committee and appoint additional members, and the member or members so elected shall have all the powers of, and together with those herein named and their successors respectively, shall constitute the Reorganization Committee, with like force and effect as if they were specially named herein, and the Reorganization Committee may by like vote fill any vacancy, but need not necessarily do so, and the Committee as at any time constituted, notwithstanding any vacancy, shall have all the pow-

ers, rights, property and interests of the Committee as originally formed or theretofore existing. Any member of the Reorganization Committee may resign by giving notice of his resignation in writing to the chairman of the Reorganization Committee or to a majority of the other members. The Reorganization Committee may settle any account or transaction with any member who shall have resigned or be under other disability to act or with the representatives of any deceased member, and give or receive a full release and discharge with reference thereto. The Reorganization Committee may elect one of its members to be Chairman of the Committee, may appoint a Secretary, who need not be a member of the Committee, may prescribe regulations for its meetings and the convening thereof, and may keep a record of its acts and proceedings. Except as herein otherwise provided, the affirmative vote of a majority of the members of the Reorganization Committee, as at any time constituted, shall be necessary and sufficient for the passage of any resolution or the taking of any other action (but a member may vote by proxy—who may or may not be another member of the Committee—at any meeting of the Reorganization Committee), and such affirmative vote of the majority, except as aforesaid, shall be binding upon the Reorganization Committee and the Depositors. It shall not be necessary for the members of the Reorganization Committee formally to meet in order to take any action provided they agree on any matter and embody such

agreement in any form of writing signed by every member of the Reorganization Committee.

All members of the Reorganization Committee shall be entitled to compensation for their services.

The Reorganization Committee and any member thereof and the Depositary and any officer or director thereof and anyone connected with the Reorganization Committee or with any of the members thereof or with the Depositary or with the Operating Company or the Holding Company or with any other company mentioned or referred to herein (whether as member, incorporator, stockholder, director, officer or in any capacity) and any Depositor or any transferee of any Depositor and any partnership or corporation with which any person above mentioned may be connected in any manner may be or become pecuniarily interested, without accountability in respect thereof, in any contract, transaction, property or matter with which the Plan or Agreement or the Operating Company or the Holding Company or any other Company or any committee mentioned or referred to herein are concerned, including participation in any syndicate agreement whether or not mentioned in the Plan. Any such person or corporation may also become a Depositor under the Plan and Agreement, and in such event shall have the same rights, benefits and obligations hereunder and in respect of all Old Bonds deposited, all claims transferred, all property purchased, all securities of the Operating Company or the Holding Company to be issued or re-

ceived, and all payments to be made, as other Depositors in like case, and may buy and sell certificates of deposit and undeposited Old Bonds in the same manner and with the same rights as any one not a Depositor.

The Reorganization Committee may form or procure the formation of any syndicate or syndicates which it may deem necessary or advantageous for carrying out the purposes of the Plan or of this Agreement and any of the members of the Reorganization Committee may act as members or managers of any such syndicate or syndicates. The terms of any agreement forming and of all agreements with, any such syndicate may be fixed by the Reorganization Committee, and as so fixed shall be binding and conclusive upon the Depositors. The syndicate managers, whether or not members of the Reorganization Committee may receive compensation as such syndicate managers, and syndicate managers who may be members of the Reorganization Committee may receive also compensation as members of the Reorganization Committee.

The Reorganization Committee may remove and in such event or in the event of its resignation or incapacity may appoint a successor to the Depositary. Any direction given by the Reorganization Committee, evidenced by a writing signed by the Chairman or certified by the Secretary thereof, shall be full and sufficient authority for any action of the Depositary or of any other custodian or of any committee or agent. The Depositary shall in-

cur no liability for anything done or permitted at the request or direction of the Reorganization Committee.

Thirteenth.—The enumeration of specific powers hereby conferred shall not be construed to limit or to restrict the general powers herein conferred or intended so to be, and it is hereby declared that it is intended to confer on the Reorganization Committee in all respects any and all powers which the Reorganization Committee may deem necessary or expedient in or towards carrying out or promoting in any respect the purposes of the Plan and Agreement as now existing or as the same may be modified as herein provided, even though any such power be apparently of a character not now contemplated, and the Reorganization Committee may exercise any and every such power as fully and effectively as if the same were herein specified and as often as for any cause or reason it may deem expedient.

Fourteenth.—No right is conferred or created hereby nor is any trust, liability or obligation (except the agreements herein contained in favor of Depositors and of the Reorganization Committee, the Protective Committee and the Depositary) created by the Plan and Agreement or assumed hereunder by or for the Operating Company or the Holding Company, or in favor of any creditor or of any holder of any claim whatsoever against the Old Company or in favor of any other company now existing or to be formed hereafter or in favor of any person or corporation whatsoever, with respect

to any Deposited Bonds or coupons or any claims against the Denver Company or any moneys paid to or received by the Reorganization Committee or by the Depositary [1065] hereunder or with respect to any property acquired by purchase at any sale or otherwise acquired or with respect to any new securities to be issued under the Plan or with respect to any other matter or thing, but this Agreement shall be construed as strictly an agreement between the parties and as solely affecting and relating to the Reorganization Committee, the Protective Committee, the Depositary and Depositors hereunder. The Deposited Bonds and claims against the Denver Company and all property, securities, claims, demands and rights acquired pursuant to the Plan and Agreement shall remain in full force and effect for all purposes and shall not be deemed merged, satisfied or discharged, and no legal right or lien shall be deemed released or waived unless the same shall be specifically provided for by affirmative action of the Reorganization Committee as permitted hereby; and all such claims, demands and rights may be enforced by the Reorganization Committee or by anyone to whom the same may be assigned, as provided herein, with authority conferred by the Reorganization Committee for the enforcement thereof.

Fifteenth.—All calls for payments to be made under the Plan or for the surrender or presentation of certificates of deposit issued hereunder or under the Protective Agreement, all notices fixing or

limiting any period for the deposit or withdrawal of securities or for the taking of any action or for payments and all other calls and notices hereunder shall be inserted in at least two daily newspapers published in the City of New York and in at least one daily newspaper published in the City and County of San Francisco, twice in each week for two successive calendar weeks in each case on any days of the week. Any call or notice whatsoever when so published by the Committee shall be taken and considered as though personally served upon all parties to be bound thereby as of the respective dates of insertion thereof, and such publication shall be the only notice required to be given under any provision of the Plan and Agreement.

Sixteenth.—The Plan and this Agreement shall bind and benefit the several parties and their and each of their survivors, successors, executors, administrators and assigns.

A printed copy of this Agreement signed by the members of the Protective Committee or three-fourths of them and by the members of the Reorganization Committee or a majority of them and lodged with The Equitable Trust Company of New York shall be held and taken to be the original Agreement. This Agreement may, however, be executed in any number of counterparts with the same effect as if all of the parties executing the same had executed but one instrument.

In witness whereof, the undersigned members of the Protective Committee and of the Reorganization Committee have caused these presents to be

duly executed the day and year first above written and the parties of the second part have become parties hereto in the manner herein provided.

ALVIN W. KRECH,

Chairman.

C. LEDYARD BLAIR,

I. de BRUYN,

F. H. ECKER,

DAVID R. FORGAN,

A. M. HUNT,

STARR J. MURPHY,

JAMES D. PHELAN,

W. A. READ,

WILLIAM SALOMON,

GEORGE WHITTELL,

RICHARD B. YOUNG,

Protective Committee.

LYMAN RHOADES,

Secretary.

ALVIN W. KRECH,

A. M. HUNT,

JAMES D. PHELAN,

GEORGE WHITTELL,

DAVID R. FORGAN,

I. de BRUYN,

C. LEDYARD BLAIR,

F. H. ECKER,

STARR J. MURPHY,

W. A. READ,

WILLIAM SALOMON,

RICHARD B. YOUNG,

Reorganization Committee.

EXHIBIT B.

The Western Pacific Railroad Company

LOAN ACCOUNT WITH

THE RAILROAD CREDIT CORPORATION

Loan evidenced by note dated June 29, 1932—Face	\$1,303,000.00
Credits—as detailed below	150,829.12

Unpaid balance November 30, 1939	\$1,152,170.88
----------------------------------	----------------

Loan evidenced by note dated March 25, 1933—Face	\$1,293,439.00
(No principal credits to November 30, 1939)	

Total principal unpaid November 30, 1939	\$2,445,609.88
--	----------------

Credits on Principal—June 29, 1932, Loan

December 15, 1933—Credit for tax refunds:

Western Pacific	\$2,602.52
Sacramento Northern	437.56
Tidewater Southern	74.03

\$3,114.11

March 7, 1934—Credit for tax refunds:

Western Pacific	\$2,602.52
Sacramento Northern	437.56
Tidewater Southern	74.03

\$3,114.11

February 20, 1935—Credit for tax refunds:

Western Pacific	\$1,147.06
Sacramento Northern	147.70
Tidewater Southern	11.59

\$1,306.35

May 24, 1935—Interest on advances—Standard Realty & Development Company	1,331.50
---	----------

May 29, 1936—Payment of principal of advances—Standard Realty & Development Company	10,000.00
---	-----------

May 29, 1936—Interest on advances—Standard Realty & Development Company	5,366.06
---	----------

July 29, 1936—Interest on advances—Standard Realty & Development Company	1,230.74
October 20, 1936—Interest on advances—Standard Realty & Development Company	1,244.26
February 6, 1937—Interest on advances—Standard Realty & Development Company	1,244.26
(Various—7/15/33 to 3/15/37)	
Distributions Nos. 1-5, 8-38, W. Pac.	109,733.33
Distributions Nos. 3-5, 8-38, Sac. Nor.	13,036.86
Distributions Nos. 3-5, 8-38, Deep Creek	107.54
	<hr/>
	\$150,829.12
	[1067]

The Western Pacific Railroad Company
(and subsidiaries)

FUND ACCOUNT

Western Pacific Railroad Company	
Original Fund contribution	\$183,825.17
Less—Refunds for taxes	6,352.10
Net contribution	<hr/> \$177,473.07
Allocated income 1932-1938	9,187.15
Total credit	<hr/> \$186,660.22
Less—Distributions:	
1-5, 8-38 applied on principal of loan indebtedness	\$109,733.33
6, 7, 39-47, applied on loan interest	29,583.04
	<hr/> 139,316.37
Undistributed book balance November 30, 1939	\$ 47,343.85
Deep Creek Railroad Company	
Original Fund contribution	\$ 188.69
Allocated income 1932-1938	9.76
Total credit	<hr/> \$ 198.45

Institutional Bondholders et al.

1213

Less—Distributions:

1-2—Paid in Cash	\$ 9.44	
3-5, 8-88—Applied on principal of W. Pac loan indebtedness	107.54	
6, 7, 39-47—Applied on W. Pac. loan in- terest	31.14	148.12

Undistributed book balance November 30, 1939 \$ 50.33

Sacramento Northern Railroad Company

Original Fund Contribution \$ 24,066.36

Less—Refunds for taxes 1,022.82

Net contribution \$ 23,043.54

Allocated income 1932-1938 1,192.88

Total credit \$ 24,236.42

[1068]

Less—Distributions:

1, 2—Paid in cash	\$ 1,203.31	
3-5, 8-38—Applied on principal of W. Pac. loan indebtedness	13,036.86	
6-7, 39-47—Applied on W. Pac. loan in- terest	3,849.04	\$ 18,089.21

Undistributed book balance November 30, 1939 \$ 6,147.21

Total undistributed book balance (3 roads) \$ 53,541.39

[1069]

EXHIBIT C

THE WESTERN PACIFIC RAILROAD COMPANY
STATEMENT SHOWING ORDINARY AND EXTRAORDINARY EXPENSES FOR MAINTENANCE
DURING PERIOD IN WHICH IMPROVEMENT AND REHABILITATION PROGRAM WORK WAS IN PROGRESS
 (Work executed in years 1927-1938 inclusive.)

OPERATING EXPENSES ONLY

	1927	1928	1929	1930	1931	1932
Maintenance of Way & Structures						
Ordinary Operating Expenses	\$2,759,842	\$2,413,377	\$2,685,045	\$2,072,441	\$2,008,197	\$1,388,095
Improvement & Rehabilitation Operating Expenses	324,218	931,336	488,025	537,421	110,339	56,246*
Total M. W. & S. Operating Expenses	\$3,084,060	\$3,344,713	\$3,173,070	\$2,609,862	\$2,118,536	\$1,331,849
Maintenance of Equipment						
Ordinary Operating Expenses	\$2,586,035	\$2,637,274	\$2,674,881	\$2,467,229	\$2,214,256	\$1,866,586
Improvement & Rehabilitation Operating Expenses	363,387	374,345	587,306	174,040	12,396	144
Total M. of E. Operating Expenses	\$2,949,422	\$3,011,619	\$3,262,187	\$2,641,269	\$2,226,652	\$1,866,730
Total Maintenance:						
Ordinary Operating Expenses	\$5,345,877	\$5,050,651	\$5,359,926	\$4,539,670	\$4,222,453	\$3,254,681
Improvement & Rehabilitation Operating Expenses	687,605	1,305,681	1,075,331	711,461	122,735	56,102*
Total Maintenance Operating Expenses	\$6,033,482	\$6,356,332	\$6,435,257	\$5,251,131	\$4,345,188	\$3,198,579

OPERATING EXPENSES ONLY

	1933	1934	1935	1936	1937	1938
Maintenance of Way & Structures						
Ordinary Operating Expenses	\$1,693,971	\$1,790,291	\$2,016,133	\$2,052,259	\$2,514,324	\$2,454,043
Improvement & Rehabilitation Operating Expenses	35,197*	107,874	353,036	1,057,541	1,112,890	1,137,111
Total M. W. & S. Operating Expenses	\$1,658,774	\$1,898,165	\$2,369,169	\$3,109,800	\$3,627,214	\$3,591,154
Maintenance of Equipment						
Ordinary Operating Expenses	\$1,895,711	\$1,852,951	\$2,064,458	\$2,327,298	\$2,837,259	\$2,377,072
Improvement & Rehabilitation Operating Expenses	—	54,000	83,000	527,379	732,227	200,502
Total M. of E. Operating Expenses	\$1,895,711	\$1,906,951	\$2,147,458	\$2,854,677	\$3,569,486	\$2,577,574
Total Maintenance						
Ordinary Operating Expenses	\$3,589,682	\$3,643,242	\$4,080,591	\$4,379,557	\$5,451,583	\$4,831,115
Improvement & Rehabilitation Operating Expenses	35,197*	161,874	436,036	1,584,920	1,845,117	1,337,613
Total Maintenance Operating Expenses	\$3,554,485	\$3,805,116	\$4,516,627	\$5,964,477	\$7,296,700	\$6,168,728

Note: (*) Denotes red figures.

Note: Extraordinary work executed during 1927-1932, inclusive, was characterized as the "Improvement Program." Such work executed during 1929-1932 inclusive was not under the improvement program. Work executed during 1926-1929 inclusive was characterized as the

THE WESTERN PACIFIC RAILROAD COMPANY
STATEMENT SHOWING ORDINARY AND EXTRAORDINARY EXPENSES FOR MAINTENANCE
DURING PERIOD IN WHICH IMPROVEMENT AND REHABILITATION PROGRAM WORK WAS IN PROGRESS
(Work executed in years 1927-1938 inclusive.)

OPERATING EXPENSES ONLY

	1927	1928	1929	1930	1931	1932
Maintenance of Way & Structures						
Ordinary Operating Expenses	\$2,759,842	\$2,413,377	\$2,685,045	\$2,072,441	\$2,008,197	\$1,388,095
Improvement & Rehabilitation Operating Expenses	324,218	931,336	488,025	587,421	110,339	56,246*
Total M. W. & S. Operating Expenses	\$3,084,060	\$3,344,713	\$3,173,070	\$2,609,862	\$2,118,536	\$1,331,849
Maintenance of Equipment						
Ordinary Operating Expenses	\$2,586,035	\$2,637,274	\$2,674,881	\$2,467,229	\$2,214,256	\$1,866,588
Improvement & Rehabilitation Operating Expenses	363,387	374,345	587,306	174,040	12,396	144
Total M. of E. Operating Expenses	\$2,949,422	\$3,011,619	\$3,262,187	\$2,641,269	\$2,226,652	\$1,866,730
Total Maintenance:						
Ordinary Operating Expenses	\$5,345,877	\$5,050,651	\$5,359,926	\$4,539,670	\$4,222,453	\$3,254,681
Improvement & Rehabilitation Operating Expenses	687,605	1,305,681	1,075,331	711,461	122,735	56,102*
Total Maintenance Operating Expenses	\$6,033,482	\$6,356,332	\$6,435,257	\$5,251,131	\$4,345,188	\$3,198,579

OPERATING EXPENSES ONLY

	1933	1934	1935	1936	1937	1938
Maintenance of Way & Structures						
Ordinary Operating Expenses	\$1,693,971	\$1,790,291	\$2,016,133	\$2,052,269	\$2,514,324	\$2,454,043
Improvement & Rehabilitation Operating Expenses	35,197*	107,874	353,036	1,057,541	1,112,890	1,137,111
Total M. W. & S. Operating Expenses	\$1,658,774	\$1,898,165	\$2,369,169	\$3,109,800	\$3,627,214	\$3,591,154
Maintenance of Equipment						
Ordinary Operating Expenses	\$1,895,711	\$1,852,951	\$2,064,458	\$2,327,298	\$2,937,259	\$2,377,072
Improvement & Rehabilitation Operating Expenses	—	54,000	83,000	527,379	732,227	200,502
Total M. of E. Operating Expenses	\$1,895,711	\$1,906,951	\$2,147,458	\$2,854,677	\$3,669,486	\$2,577,574
Total Maintenance						
Ordinary Operating Expenses	\$3,589,682	\$3,643,242	\$4,080,591	\$4,379,557	\$5,451,583	\$4,831,115
Improvement & Rehabilitation Operating Expenses	35,197*	161,874	436,036	1,584,920	1,845,117	1,337,613
Total Maintenance Operating Expenses	\$3,554,485	\$3,805,116	\$4,516,627	\$5,964,477	\$7,296,700	\$6,168,728

Note: (*) Denotes red figures.

Note: Extraordinary work executed during 1927-1932, inclusive, was characterized as the "Improvement Program." Such work executed during 1933-1935 inclusive, was not under a specific program. Work executed during 1936-1938 inclusive was characterized as the "Rehabilitation Program."

Office of President,
The Western Pacific R. R. Co.,
San Francisco, California,
December 18, 1939.

EXHIBIT D.

**GRANTING CLAUSES OF FIRST
MORTGAGE.**

Granting clauses.

Grant and conveyance.

Now, therefore, this indenture Witnesseth, that, in order to secure the payment of all of said bonds (which are hereinafter called "First Mortgage Bonds") at any time issued and outstanding under this indenture according to their tenor, purport and effect, as well the interest as the principal thereof, and to secure the performance and observance of all of the covenants and conditions therein and herein contained and to declare the terms and conditions upon which the First Mortgage Bonds are to be executed, authenticated, delivered and received, the Company, in consideration of the premises and of the acceptance or purchase of said bonds by the holders thereof and of the sum of One hundred Dollars, lawful money of the United States of America, to it duly paid by the Trustees at or before the ensealing and delivery of these presents, the receipt whereof is hereby acknowledged, hath granted, bargained, sold, aliened, remised, released, conveyed, confirmed, mortgaged, pledged, assigned, transferred and set over, and by these presents doth grant, bargain, sell, alien, remise, release, convey, confirm, assign, mortgage, pledge, transfer and set over unto the Trustees, their successors in the trust and their assigns forever, all of the following described railways, franchises and other properties

(which collectively are hereinafter called the "trust estate"), to wit:

Property formerly of Western Pacific Railway Company of its receivers:

First.—All and singular the following described lines of railroad, terminals, lands, equipment, shares of stock and other real and personal property and interests and rights in property owned by the Company or to which it may be entitled, formerly the property of or belonging to Western Pacific Railway Company, a corporation of the State of California, or its receivers:

—Main line from San Francisco to Salt Lake City:

I.—A main line of railroad commencing in the City and County of San Francisco, running thence in and through said City and County to certain slips, piers and landing places upon San Francisco Bay in said City and County; thence by ferry and barge to the City of Oakland, in the County of Alameda; thence in and through said City of Oakland; thence in a southeasterly, easterly, northeasterly and northerly direction through the Counties of Alameda and San Joaquin, passing in and through the City of Stockton in said County of San Joaquin; thence in a general northerly direction through the County of Sacramento, passing in and through the City of Sacramento in said county; thence in a general northerly direction through the Counties of Sutter and Yuba, passing in and through the City of Marysville in said County of

Yuba; thence in a general northerly direction through the County of Butte, passing through the City of Orville in said County; thence in a general, northeasterly, easterly and southeasterly direction through the County of Plumas; thence in a general northerly and easterly direction through the County of Lassen to a point on the boundary line between the States of California and Nevada; thence in a general easterly and northeasterly direction through the Counties of Washoe, Humboldt, Lander, Eureka and Elko, in the State of Nevada, to a point on the boundary line between the States of Nevada and Utah; thence in a general easterly direction through the Counties of Tooele and Salt Lake, in the State of Utah, to and into Salt Lake City, in said State of Utah—said line of railroad being about 927.3 miles in length.

—branch line from Carbona to Tesla;

II.—A branch line of railroad, having its initial point and connection with said main line at or near Carbona in San Joaquin County, California, and extending thence in a southwesterly and westerly direction to a point near Tesla, Alameda County, California—being about 13 miles in length.

—terminals, telegraph lines, etc.;

II.—A branch line of railroad, having its initial in lands, easements therein and improvements thereon, including, among other things, yards, station and depot grounds, sheds, station houses, freight houses, warehouses, elevators, stock-yards, car-

houses, engine houses, oil tanks, water tanks, water supply, shops, hotels, boarding houses, hospitals, docks, wharves, piers, slips, telephone and telegraph lines and other structures and erections and the appurtenances of all and every of the foregoing, whether or not for use in connection with said or any lines of railroad.

—equipment;

IV.—All locomotives, motor cars, express cars, dining cars, freight cars, passenger cars, combination cars, work cars and other rolling stock; all ferries, tugs, barges, transfers, lighters, harbor craft and other floating equipment; all machinery, tools and appliances, all electrical generating and transmission and other electrical apparatus and all other equipment, apparatus, appliances and facilities.

—shares of stock;

V.—The following shares of stock in other corporations, which are hereby assigned to and simultaneously with the execution hereof are deposited with the Trustees:

995 shares of the par value of \$100 each of the capital stock of The Salt Lake City Union Depot and Railroad Company, a Utah corporation, all of the other shares of stock wherein (except 9 shares held by directors)

—to wit, 996 shares—are owned or controlled by The Denver and Rio Grande Railroad Company, a consolidated corporation existing under the laws of Colorado and Utah.

4000 shares of the par value of \$100 each of the capital stock of Standard Realty and Development Company, a California Corporation, being all of the capital stock thereof except 5 shares held by directors.

—leases and agreements;

V.—The estates, interests and rights of the Company under any and all leases, leaseholds, rights under leases or contracts, trackage agreements, traffic agreements, and operating agreements, and particularly the interests and rights of the Company heretofore possessed by Western Pacific Railway Company (but not including any of the claims or rights against, or with respect to the property of, The Denver and Rio Grande Railroad Company or any predecessor or successor corporation of, or which originally arose in favor of, holders of the First Mortgage Five Per Cent. Thirty-year Gold Bonds of said Western Pacific Railway Company or of coupons belonging thereto nor any of the proceeds or avails of any such claims or rights whether or not such proceeds or avails shall [1071] have been collected or obtained otherwise, in whole or in part, by the use of First Mortgage Bonds or the proceeds thereof unless the same or any part thereof shall hereafter be subjected to the lien hereof by an instrument executed expressly for such purpose) under (1) an agreement, bearing date June 23, 1905, between The Denver and Rio Grande Railroad Company, The Rio Grande Western Railway Company, Western Pacific Railway Company and Bowling Green Trust

Company (The Equitable Trust Company of New York being successor thereto), as trustee under the First Mortgage of Western Pacific Railway Company, and (2) an agreement bearing date said last-mentioned day between Missouri Pacific Railway Company and The Denver and Rio Grande Railroad Company: provided, however, that any now existing interest or right of the Company under any lease, agreement or other instrument or contract, which by the terms of a decree of foreclosure and sale entered in a cause pending in the United States District Court for the Northern District of California, wherein The Equitable Trust Company of New York was plaintiff and Western Pacific Railway Company and others were defendants, the Company is entitled to renounce or disaffirm and which pursuant to the provisions of said decree it shall so renounce or disaffirm, shall not be deemed to have been assigned, mortgaged, pledged or otherwise encumbered by this indenture.

—other property.

VII.—All and singular the property, interests and rights, (except cash, accounts and bills receivable, traffic and other operating balances and other cash items) not comprised in the descriptions contained in the foregoing subdivisions of this clause. First of these granting clauses, which belong to the Company or to which it may be entitled in any manner and which heretofore were owned by Western Pacific Railway Company or to which said company was or its receivers were entitled.

Special Master's deed.

The lines of railroad, terminals, lands, structures, equipment, shares of stock and other property, interests and rights hereinabove in this clause First of these granting clauses described, were formerly the properties, interests and rights of Western Pacific Railway Company or its receivers and were conveyed and assigned to the Company by deed dated July 1, 1916, wherein Francis Krull as Special Master appointed in and by said above mentioned decree of foreclosure and sale is named as party of the first part, said Western Pacific Railway Company as party of the second part, F. G. Drum and Warren Olney, Junior, as receivers of said Western Pacific Railway Company, as parties of the third part, The Equitable Trust Company, of New York, as trustee under the First Mortgage of said Western Pacific Railway Company executed to the Bowling Green Trust Company, trustee, as of date September 1, 1903, as party of the fourth part, Central Trust Company of New York, as trustee under the Second Mortgage of Western Pacific Railway Company executed to said Central Trust Company of New York, trustee, and dated July 1, 1908, as party of the fifth part, Franklin V. Spooner, Robert R. Pardow and John C. Rued, as parties of the sixth part, and the Company as party of the seventh part: which deed was executed and delivered to the Company before the execution of this indenture.

Other property presently owned.

Second.—All other lines of railroad, extensions, branches, terminals, lands, structures, equipment, shares of stock, bonds, notes and other securities, claims, franchises, privileges and immunities and other property and estates, interests and rights (whether legal or equitable) now owned by or belonging to the Company, notwithstanding the same or any thereof may not be particularly set forth in these granting clauses.

After-acquired property.

Third.—Any and all property and facilities of any and every kind and description, including among other things lines of railroad, extensions and branches, telegraph and telephone lines, lines and instrumentalities of water transportation, terminal facilities, equipment, lands, buildings, machinery and tools, stocks, bonds, notes and other obligations and securities and any and all right, title and interest in any of such properties or facilities which may from time to time hereafter be acquired or constructed by or belong to the Company or any successor or purchasing corporation if

(a) acquired or constructed by the use of First Mortgage Bonds or proceeds thereof or cash deposited hereunder (except bonds delivered or cash paid out under any of the provisions of this indenture in reimbursement of previous expenditures certified as hereinafter provided) or on account of the purchase, acqui-

sition or construction thereof or work thereon. First Mortgage Bonds shall hereafter be authenticated and delivered or the proceeds of First Mortgage Bonds or other cash deposited hereunder shall hereafter be paid out under any of the provisions of this indenture; or

(b) consisting of or, if securities, representing property or facilities constituting an integral part or parts of lines of railroad, extensions, branches, or other property subject to the lien of this indenture or some other integral portion whereof is, or integral portions whereof are subject to the lien hereof or represented by securities subject to the lien hereof; or

(c) consisting of or, if securities, representing property or facilities used or acquired for use in or for the maintenance or operation of or appertaining to any of the lines of railroad, extensions, branches or other property subject, or represented by securities subject, to the lien of this indenture; or

(d) consisting of shares of stock in or other securities of said The Salt Lake City Union Depot and Railroad Company or said Standard Realty and Development Company or any subsidiary company or any right, title or interest which the Company or any successor or purchasing corporation may hereafter acquire in or to any of the property of either of said companies or in or to any line of railroad or other property of any corporation which shall

then be or immediately prior thereto shall have been a subsidiary company, as the term "subsidiary company" is defined in Section 2 of Article Second hereof.

Property hereafter conveyed in trust.

Fourth.—Any and all lines of railroad and other property of whatsoever kind or description, which may include, among other things, stocks, bonds, notes and other obligations and securities and also claims, demands and choses in action of whatsoever kind, from time to time hereafter by delivery or by writing of any kind, for any of the purposes hereof, conveyed, assigned, transferred, mortgaged or pledged by the Company or by any successor or purchasing corporation or by any person or corporation on behalf of any of them or with the written consent of any of them to the Trustees, who are hereby authorized to receive any such property at any and all times as and for additional security hereunder and also when and as hereinafter provided as substituted security hereunder and, except as hereinafter otherwise expressly provided and except with respect to anything which by or under any other of the provisions of this indenture is mortgaged or pledged or agreed to be mortgaged or pledged or to be subjected to the lien hereof as security hereunder, any such conveyance, assignment, transfer, mortgage or pledge may be made subject to any conditions, reservations, limitations and provisions which shall be set forth in an instru-

ment in writing then to be executed by the Company or the person or corporation making such conveyance, assignment, transfer, mortgage or pledge respecting the use, management and disposition of the property constituting such additional security and the proceeds thereof.

Appurtenances, etc.

Franchises.

Replacements.

Fifth.—All rights of way and other easements; all tunnels, roadbeds, main tracks, double tracks and other additional tracks, spurs, side tracks, turnouts, switches, turntables; all superstructures, bridges, viaducts, stringers, ties, rails, frogs and bolts; all fences, telegraph and telephone lines, poles, wires, block signals and instruments; all terminal facilities; all wharves, docks, slips, piers, floats, loading and unloading apparatus and landings; all steamships, tugs, ferries, barges, lighters and other floating equipment; all passenger stations, freight houses, warehouses, elevators, power houses, coal houses, oil tanks, car houses, engine houses, machine shops and other shops and structures; all water stations, water tanks and water supplies; all locomotives, tenders, motor cars, express cars, postal cars, dining cars, baggage cars, passenger cars, combination cars, work cars, freight cars and other rolling stock and equipment; all machinery, apparatus, tools, implements, appliances, furniture, material and supplies; all land used or designed for

way-grounds, terminals, yards, stations, depots, warehouses or other structures or facilities; all other property of every description and all rights and interests in or with respect to the use of property; provided that the foregoing or any thereof, whether now owned by the Company or at any time hereafter acquired by it or any grantee, successor or purchasing corporation, shall be appurtenant to or used or held for use as, or as a part or as parts of, or to facilitate or safeguard the maintenance or operation of, any lines of railroad, extensions, branches, telegraph or telephone lines, lines of water transportation, terminal facilities or other properties now or at any time hereafter subject to the lien of this indenture—whether the same exclusively appertain to or be used as parts of or in or for the maintenance or operation of lines of railway or other properties subject to the lien hereof or appertain to or be so used as parts of or in or for the maintenance or operation of such lines of railroad or other properties in common with lines of railroad or property not subject to the lien hereof; also all corporate and other rights, franchises, privileges and immunities now appertaining or hereafter to appertain to or used or held for use in or for the maintenance or operation of any such lines of railroad or other property now or at any time hereafter subject to the lien of this indenture, whether the Company now owns or it or any successor or purchasing corporation hereafter shall acquire any such rights, franchises, privileges or immunities:

also any and all replacements, renewals, improvements and betterments of and additions to any such lines of railroad or any property or rights of whatsoever description now or at any time hereafter subject to the lien of this indenture, whensoever and by whomsoever such replacements, renewals, improvements, betterments or additions may be made.

• Estates.

Rents.

Sixth.—All and singular the estates, rights, titles, interests, possession, claims and demands, whatsoever, as well at law as in equity, of the Company and of any successor or purchasing corporation of, in or to any of the lines of railroad, extensions, branches, telegraph and telephone lines, lines of water transportation, terminal facilities, equipment, lands and other properties, hereditaments, appurtenances, rights, franchises, privileges and immunities hereby conveyed, assigned, mortgaged or pledged or intended to be conveyed, assigned, mortgaged or pledged or now or at any time hereafter subject to the lien of this indenture and every part and parcel thereof, and all and singular the rents, issues, tolls, profits and other income of all and every part of the property of whatsoever kind or description hereby conveyed, assigned, mortgaged or pledged or intended to be conveyed, assigned, mortgaged or pledged or now or at any time hereafter subject to the lien of this indenture.

Company may acquire property free of lien hereof.

But nothing express or implied in this indenture shall be construed to limit the right or power of the Company or any successor or purchasing corporation, which right and power is hereby expressly reserved, by the use of its credit or free funds or by the use of First Mortgage Bonds delivered to the Company or any successor or purchasing corporation as in this indenture provided to reimburse the Company or any such successor or purchasing corporation for expenditures *theretofore actually made out of its free funds, to construct or acquire free from the lien hereof lines of railroad, extensions or branches or interests therein, equipment, stocks, bonds or other securities or other property, rights, franchises, immunities or privileges provided the same shall not be lines of railroad, extensions, or branches or interests therein, equipment, stocks, bonds or other securities, or other property, rights, franchises, immunities or privileges (a) on account of the purchase, acquisition or construction whereof or work whereon First Mortgage Bonds shall be authenticated and delivered or their proceeds or other cash deposited hereunder shall be paid out as herein provided; or (b) consisting of, or if securities representing, property or facilities constituting an integral part or parts of lines of railroad, extensions, branches or other property subject to the lien of this indenture or some other integral portion whereof is or integral portions whereof are subject to the lien hereof or

represented by securities subject to the lien hereof; or (c) consisting of or, if securities, representing property or facilities used or acquired for use in or for the maintenance or operation of or appertaining to any of the lines of railroad, extensions, branches or other property subject, or represented by securities subject, to the lien of this indenture; or (d) consisting of shares of stock in or other securities of said The Salt Lake City Union Depot and Railroad Company or said Standard Realty and Development Company or any subsidiary company or of any right, title or interest which the Company or any successor or purchasing corporation may acquire in or to any of the property of either of the companies above named or in or to any line of railroad or other property of any corporation which shall then be or immediately prior thereto shall have been a subsidiary company as the term subsidiary company is defined in Section 2 of Article Second hereof; and the Company may, unless First Mortgage Bonds shall have been authenticated and delivered or their proceeds or other cash deposited hereunder paid out against the same, purchase and acquire equipment, free from the lien hereof, by lease, conditional sale agreement or under any form of equipment trust, or purchase such equipment and issue obligations therefor secured by mortgage or pledge of such equipment superior to the lien of this indenture.

Habendum.

To Have and to Hold the premises, railways, properties, securities, rights, franchises, estates and appurtenances hereby conveyed or assigned or intended to be conveyed or assigned unto the Trustees, their successors in the trust and assigns forever:

Subject, However, as to all equipment now owned to the equipment trust or conditional sale agreements secured thereon, and as to equipment hereafter acquired, to the equipment trust or conditional sale agreements to which the same shall be subject as permitted hereby, and as to any property hereafter acquired by the Company or by any successor or purchasing corporation and becoming subject to the lien of this indenture, to any liens thereon existing at the time of such acquisition and not expressly prohibited by the terms of this indenture.

Grant in trust.

But in Trust Nevertheless for the equal and proportionate benefit and security of all present and future holders of the First Mortgage Bonds and coupons and for the enforcement of the payment of said bonds and coupons when payable and the performance and observance of and compliance with the covenants and conditions of this indenture, without prefer- [1073] ence, priority or distinction as to lien or otherwise of one bond over any other bond by reason of priority in the issue, sale or negotiation thereof, or the purpose of its issue, so that each and every bond hereby secured shall have the

same right, lien and privilege under and by virtue of this indenture and, subject to the terms hereof, be equally and proportionately secured hereby, as if all of the First Mortgage Bonds had been made, executed, authenticated, delivered and negotiated simultaneously with the execution and delivery of this indenture, it being intended that the lien and security of this indenture shall take effect from the date of the execution and delivery hereof without regard to the time of the actual issue, sale or negotiation of said bonds and as though upon said date all of said bonds were actually authenticated, issued, sold and delivered and were in the hands of holders in due course. [1074]

EXHIBIT E

GRANTING CLAUSES OF GENERAL AND REFUNDING MORTGAGE

Now, Therefore, This Indenture Witnesseth:

That in order to secure the payment of all of the General and Refunding Bonds at any time issued and outstanding under this indenture according to their tenor, purport and effect, as well the interest as the principal thereof, and to secure the performance and observance of all the covenants and conditions therein and herein contained, and to declare the terms and conditions upon which the General and Refunding Bonds are to be issued, received and held, and for and in consideration of the premises and of the acceptance or purchase of the General and Refunding Bonds by the holders

thereof, and of the sum of One Hundred dollars (\$100), lawful money of the United States of America to the Company duly paid by the Trustee at or before the ensembling and delivery of this indenture, the receipt whereof is hereby acknowledged, the Company has executed and delivered this indenture and has granted, bargained, sold, aliened, remised, released, conveyed, confirmed, assigned, transferred and set over, and by these presents does grant, bargain, sell, alien, remise, release, convey, confirm, assign, transfer and set over unto the Trustee, its successors in the trust and its and their assigns, all of the Company's right, title and interest in and to:

First: All and singular the following described lines of railroad and other property and all other lines of railroad at the time of the execution of this indenture owned by the Company and all right, title and interest of the Company in and to any other lines of railroad in or to which at said date the Company has any right, title or interest:

A. The following lines of railroad are now constructed and operated:

I.—A main line of railroad commencing in the City and County of San Francisco, running thence in and through said City and County to certain slips, piers and landing places upon San Francisco Bay in said City and County; thence by ferry and barge to the City of Oakland, in the County of Alameda; thence in and through said City of Oakland; thence in a southeasterly,

easterly, northeasterly and northerly direction through the Counties of Alameda and San Joaquin, passing in and through the City of Stockton in said County of San Joaquin; thence in a general northerly direction through the County of Sacramento, passing in and through the City of Sacramento in said County; thence in a general northerly direction through the Counties of Sutter and Yuba, passing in and through the City of Marysville in said County of Yuba; thence in a general northerly direction through the County of Butte, passing through the City of Oroville in said County; thence in a general northeasterly, easterly and southeasterly direction through the County of Plumas; thence in a general northerly and easterly direction through the County of Lassen to a point on the boundary line between the States of California and Nevada; thence in a general easterly and northeasterly direction through the Counties of Washoe, Pershing, Humboldt, Lander, Eureka and Elko, in the State of Nevada, to a point on the boundary line between the States of Nevada and Utah; thence in a general easterly direction through the Counties of Tooele and Salt Lake, in the State of Utah, to and into Salt Lake City, in said State of Utah—said line of railroad being about 929.9 miles in length.



II.

Branch—Niles to San Jose

A branch line of railroad, having its initial point and connection with said main line at or near Niles in Alameda County, California and extending thence in a southerly direction to and into the City of San Jose in Santa Clara County, California, being about 23.9 miles in length.

Branch—Carbona to Moy

A branch line of railroad having its initial point and connection with said main line at or near Carbona in San Joaquin County, California, and extending thence in a southwesterly direction to a point near Moy, San Joaquin County, California, being about 4.4 miles in length.

Branch—North of Stockton to Stockton

A branch line of railroad having its initial point and connection with said main line at or near Stockton, San Joaquin County, California and extending thence in a westerly, southerly and easterly direction to a point in the City of Stockton, San Joaquin County, California, being about 5.9 miles in length.

Branch—Terminous Junction to Terminous

A branch line of railroad having its initial point and connection with said main line at or near Terminous Junction, San Joaquin County,

California and extending thence in a westerly direction to a point at Terminous, San Joaquin County, California, being about 7.9 miles in length.

Branch—Glannvale to Bradford Winery

A branch line of railroad having its initial point and connection with said main line at or near Glannvale, Sacramento County, California and extending thence in an easterly direction to a point at Bradford Winery, Sacramento County, California, being about 1.6 miles in length.

Branch—Adelaide to Hutchinson's Mill

A branch line of railroad having its initial point and connection with said main line at or near Adelaide, Butte County, California and extending thence in a southwesterly direction to the former site of Hutchinson's Mill, Butte County, California, being about 1.0 mile in length.

Branch—Land to Bidwell Bar

A branch line of railroad having its initial point and connection with said main line at or near Land, Butte County, California, and extending thence in an easterly direction to a point at or near Bidwell Bar, Butte County, California, being about 2.0 miles in length.

Branch—Spanish Creek Spur

A branch line of railroad having its initial point and connection with said main line at or

near Gray's Flat, Plumas County, California, and extending thence in a northerly direction to a point at Spanish Creek Lumber Company's mill, Plumas County, California, being about 0.6 miles in length.

Branch—Keddie to Bieber

A branch line of railroad having its initial point and connection with said main lines at or near Keddie, Plumas County, California, and extending thence in a northerly, northeasterly, northwesterly and northerly direction through Plumas County, California, passing in and through the Towns of [1075] Crescent Mills and Greenville in the said County of Plumas; thence in an easterly, northerly, northwesterly, northeasterly and northerly direction through Lassen County, California, passing in and through the Town of Westwood in the said County of Lassen, to a point near Bieber, Lassen County, California, being about 111.2 miles in length.

Branch—Blairsden to Davies Mill

A branch line of railroad having its initial point and connection with said main line at or near Blairsden, Plumas County, California, and extending thence in a southerly direction to a point at Davies Mill, Plumas County, California, being about 1.0 mile in length.

Branch—Gulling Junction to Gulling

A branch line of railroad having its initial point and connection with said main line at or

near Gulling Junction, Plumas County, California, and extending thence in a general northwesterly direction to a point at Gulling, Plumas County, California, being about 3.0 miles in length.

Branch—Calpine Junction to Calpine

A branch line of railroad having its initial point and connection with said main line at or near Calpine Junction, Plumas County, California, and extending thence in a general southwesterly direction to Calpine in Sierra County, California, being about 12.6 miles in length.

Branch—Hawley to Loyalton

A branch line of railroad having its initial point and connection with said main line at or near Hawley, Plumas County, California, and extending thence in a general southeasterly direction to Loyalton, Sierra County, California, being about 13.0 miles in length.

Branch—Reno Junction to Reno

A branch line of railroad having its initial point and connection with said main line at or near Reno Junction, Lassen County, California, and extending thence in a southeasterly direction through the Counties of Lassen and Sierra to a point on the boundary line between the States of California and Nevada; thence in a southeasterly and southerly direction to the City of Reno in Washoe County, Nevada, being about 33.1 miles in length.

**Branch—Gerlach to Connection with Pacific
Portland Cement Company's Railroad**

A branch line of railroad having its initial point and connection with said main line at or near Gerlach, Washoe County, Nevada, and extending thence in a southeasterly direction to a connection with the railroad of the Pacific Portland Cement Company, Washoe County, Nevada, being about 0.6 miles in length.

**Branch—Wells to Connection with O. S. L.
R. R.**

A branch line of railroad having its initial point and connection with said main line at or near Wells, Elko County, Nevada, and extending thence in a northeasterly direction to a connection with the Oregon Short Line Railroad in Elko County, Nevada, being about 1.2 miles in length.

Branch—Ellerbeck to Dolomite and Flux

A branch line of railroad having its initial point and connection with said main line at or near Ellerbeck, Tooele County, Utah, and extending thence in a southwesterly direction to a junction point; thence westerly to Dolomite, Tooele County, Utah, and also from said junction point southeasterly to Flux, Tooele County, Utah, being about 5.8 miles in length.

Branch—Burmester to Warner

A branch line of railroad having its initial point and connection with said main line at or

near Burmester, Tooele County, Utah, and extending thence in a southeasterly direction to Warner, Tooele County, Utah, being about 15.5 miles in length.

B. The following lines of railroad in which the Company owns an undivided one-half interest:

1. Tracks Owned Jointly with Southern Pacific Company in Oakland, Alameda County, California—Total length—3.92 Miles.
2. Track Owned Jointly with Southern Pacific Company near Niles, Alameda County, California—Total length—0.24 Miles.
3. Tracks Owned Jointly with Southern Pacific Company in San Jose, Santa Clara County, California — Total length — 0.36 Miles.
4. Track Owned Jointly with California Fruit Exchange at Graeagle—Total length—0.01 Miles.
5. Track Owned Jointly with Southern Pacific Company at Reno, Washoe County, Nevada—Total length—0.17 Miles.
6. Track Owned Jointly with Oregon Short Line Railroad in Salt Lake City, Salt Lake County, Utah—Total length—0.30 Miles.

C. The following lines of railroad in which the Company owns an undivided one-third interest:

Tracks Owned Jointly with Southern Pacific Company and Sacramento Northern Railway

in Sacramento County, California — Total length—0.13 Miles.

Second: All property and rights, of every name and nature, owned by the Company at the date of the execution and delivery of this indenture or thereafter acquired by it, held or acquired for use or used upon or in connection with, or appertaining to, every of the lines of railroad which, or any right, title or interest in which, shall at any time be subject to this indenture, to wit:

(a) all lands, rights of way, roadbeds, station and depot grounds, all tunnels, spurs, tracks, turnouts, switches, sidings and turntables, all superstructures, bridges, stringers, ties, rails, frogs, chairs, bolts, tie plates, splices, signals and signal apparatus, interlocking devices and other railroad appurtenances, all telegraph, telephone and electric power transmission lines, including all wires, cables, poles, conduits, ducts, subways, power plants, turbines, flumes, pipes, generators, motors, switchboards and other instruments, all stations or facilities for wireless communication and signalling, all terminals and terminal property and facilities, all station houses, warehouses, elevators, freight houses, engine houses, car houses, tower houses, yard buildings, water stations, water tanks, water supply, water power sites, fuel stations, fuel tanks, fuel supply, machine shops and other structures, all engines, tenders, cars and other rolling stock and equipment, wharves, docks,

[1076]

piers and landings, steamers and steamships, fer-

ries, boats, barges and tugs and other floating and air equipment, all machinery, tools, implements and other railroad appliances, apparatus and facilities, materials and supplies, and all other physical property, held or acquired for use or used upon or in connection with, or appertaining to, any of said lines of railroad; and

(b) all corporate rights, privileges immunities and franchises, powers, licenses, easements, leases of lines of railroad or other property, leasehold rights, trackage, terminal and traffic rights, privileges and contracts, and all other contracts and rights, and all renewals and extensions thereof, held or acquired for use or used upon or in connection with, or appertaining to, any of said lines of railroad or which the Company has, or may have, the right to exercise in respect of any of said lines of railroad.

Third: Any and all extensions, additions, improvements and betterments, to or upon or in connection with any and all lines of railroad, premises and property which, or any right, title or interest in which, shall at any time be subject to this indenture; and all tolls, revenues, earnings, income, rents, issues and profits of such lines of railroad, premises and property and every thereof, and all the estate, right, title, interest, property, possession, claim and demand whatsoever, as well in equity as in law, of the Company of, in and to such lines of railroad, premises and property and every part and parcel thereof and of, in and to the ap-

purtenances and franchises appertaining or hereafter to appertain thereto.

Fourth: The following shares of capital stock now owned by the Company:

Company	Number of Shares
The Salt Lake City Union Depot and Railroad Co.	1,000
Deep Creek Railroad Company	4,500
Sacramento Northern Railway	10,000
Standard Realty & Development Co.	4,005
Tidewater Southern Railway Company	1,147,968
Alameda Belt Line	4,130
Central California Traction Co., Common	967 ² / ₃
Central California Traction Co., Preferred	2,642 ² / ₃
Western Pacific California R. R. Co.	2,750
Railway Express Agency, Inc.	2

Fifth: The following bonds and other obligations now owned by the Company:

Description	Principal Amount
Sacramento Northern Railroad	
Class A Twenty Year Gold Bonds	\$1,904,838.20
Class B Twenty Year Gold Bonds	902,407.05
Class C Twenty Year Gold Bonds	1,203,162.94
Class D Twenty Year Gold Bonds	1,203,067.16
Central California Traction Company First Mortgage 5% Bonds	316,000.00
Sacramento Northern Railway (notes)	2,926,476.72
Deep Creek Railroad Company (notes)	45,000.00
Standard Realty and Development Company (notes)	251,273.07

[1077]

Sixth: Any and all lines of railroad, extensions, branches, terminal facilities, additional track, real property, yards, structures and facilities of every kind, rolling stock and other equipment, additions, improvements and betterments, and all stocks,

bonds and other obligations, and any and all other property of every kind and description (notwithstanding the same is not now particularly described in this indenture) which from time to time shall be constructed or acquired by the Company, in respect of the construction or acquisition whereof General and Refunding Bonds shall be authenticated and delivered or deposited moneys paid out under this indenture.

Seventh. Any and all property of every kind and description, including shares of stock, bonds and other obligations, whether owned by the Company at the date of the execution and delivery of this indenture or thereafter acquired by it, which by any provision of this indenture the Company is required to convey, mortgage, pledge, assign or transfer to the Trustee hereunder.

Eighth: Any and all property of every kind and description, including shares of stock, bonds and other obligations, which from time to time after the date of the execution and delivery of this indenture by delivery or by writing of any kind shall have been conveyed, mortgaged, pledged, assigned or transferred by the Company, or by any one in its behalf, to the Trustee for the purposes hereof, which is hereby authorized to receive at any and all times any property as and for additional security for the payment of the General and Refunding Bonds issued or to be issued under this indenture and to hold and apply any and all such property subject to the terms hereof.

But the Company may, except as otherwise herein expressly provided, by the use of its credit, or in any other manner, unless General and Refunding Bonds shall be authenticated and delivered or deposited moneys paid out hereunder to provide for, or to reimburse the Company for, the acquisition or construction thereof, construct or acquire free from the lien hereof lines of railroad, branches or extensions, or other property or interests in any of the same, of whatsoever name or nature, including shares of stock, bonds and other obligations, but excepting rolling stock and equipment for use or used upon or in connection with, and appurtenances to, the lines of railroad and property now or hereafter subject to this indenture; and unless General and Refunding Bonds shall be authenticated and delivered or deposited moneys paid out hereunder to provide for, or to reimburse the Company for, the acquisition or construction thereof, the Company may purchase and acquire rolling stock or equipment (including floating and air equipment) free from the lien hereof by lease or conditional sale under any form of equipment trust, or may purchase rolling stock or equipment and issue obligations therefor secured by mortgage or pledge of such rolling stock or equipment; provided, however, that, when and as and to the extent that the title to or any interest, legal or equitable, in rolling stock or equipment, however acquired, for use or used upon or in connection with the lines of railroad

[1077] and property now or hereafter subject to this indenture, shall vest in the Company or in any successor company operating said lines of railroad and property free in whole or in part from such trust, mortgage or pledge, then, the rolling stock or equipment or such interest therein as it becomes vested in the Company or such successor company shall become subject to the lien of this indenture.

To Have and to Hold the railroads, premises, properties, real and personal, rights, franchises, estates and appurtenances, hereby conveyed and assigned, or intended to be conveyed or assigned (hereinafter sometimes called the "trust estate"), unto the Trustee, its successors in trust and its and their assigns forever;

Subject, However, in so far, but only in so far (in extent, degree of priority or otherwise), as in law the same respectively may attach to any part or parts of the trust estate, to existing liens and charges of record upon and against any part or parts of the trust estate, and specifically, but without prejudice to such general provision, to the following mortgage and deed of trust: the First Mortgage, dated June 26, 1916, made by The Western Pacific Railroad Company to First Federal Trust Company and Henry E. Cooper, as Trustees; and

Subject, as to any property hereafter acquired by the Company and becoming subject to the lien of this indenture, to any liens thereon existing at the time of such acquisition by the Company or created in such acquisition;

In Trust, Nevertheless, for the common and equal use, benefit and security of all and singular the person or persons, firm or firms, bodies politic or corporate, who shall from time to time be holders of any of the General and Refunding Bonds or coupons and without preference of any of said bonds over any other or others of said bonds by reason of priority in the time of issue or negotiation thereof or otherwise howsoever, subject to the terms, provisions and stipulations in the General and Refunding Bonds and in this indenture contained, and for the uses and purposes and upon and subject to the terms, conditions, provisos and agreements hereinafter expressed and declared. [1078]

EXHIBIT F.

(Schedule in process of preparation showing reproduction cost new, less depreciation of equipment subject to certain equipment trusts.)

(Eliminated From This Stipulation by Agreement of the Parties) [1079]

EXHIBIT I.

The Western Pacific Railroad Company

Office of President

Mills Building, 220 Montgomery St.

San Francisco

Charles Elsey

President

March 26, 1937

Irving Trust Company,

Trustee under General and Refunding Mortgage of The Western Pacific Railroad Company, dated January 1, 1932,

1 Wall Street,
New York, N. Y.

Dear Sirs:

Among other collateral securing the Western Pacific General and Refunding Mortgage which you now have in your possession as successor Trustee thereunder, are \$270,000 face amount of Central California Traction Company First Mortgage bonds.

These bonds by their terms matured April 1, 1936, and at that time all bonds in the hands of the general public were redeemed, leaving outstanding only \$810,000 face amount of such bonds owned by the three parent companies of Central California Traction Company, viz., Southern Pacific Company, The Atchison, Topeka and Santa Fe Railway Company and The Western Pacific Railroad Company, in equal amounts of \$270,000 each.

The three parent companies and Central California Traction Company contracted, by agreement dated April 1, 1936, that during the period subsequent to the maturity of said bonds during which the owners thereof forebore to collect the principal of the bonds of said issue owned by them, interest thereon shall be paid to the owners upon the dates and at the same rate as is specified in said bonds for payment prior to maturity.

The Western Pacific Railroad Company entered into such agreement with the authorization of the Federal Court having jurisdiction of its reorganization proceeding, upon the joint petition of its Reorganization Trustees and itself for such authority. I enclose herewith, for your information, copy of such petition to the Federal Court, dated March 27, 1936, and the order of the court pursuant thereto. You no doubt have received with the files of your predecessor as Trustee under the General and Refunding Mortgage, copies of the pleadings in said reorganization proceeding, but I enclose these copies for ready reference. They are self-explanatory and indicate the reason for such arrangement. [1113] Central California Traction Company is a "feeder" railroad and does not operate at a profit, and the three parent companies must make advances to it of such funds as are necessary to meet Traction Company's expenses in excess of Traction Company's available funds. Traction Company did not have funds available with which to pay on April 1, 1936, the principal of the bonds

held by the three parent companies, and The Western Pacific Railroad Company, Debtor, at least could not practicably advance from its cash \$270,000, its proportion of the amount necessary to pay at maturity the principal of the outstanding Traction Company bonds held by the three parent companies. The arrangement was also desired by Traction Company, Southern Pacific Company and The Atchison, Topeka and Santa Fe Railway Company.

The interest payment of October 1, 1936, on the Western Pacific holding of Traction bonds was deposited with the then Trustee, The Chase National Bank of the City of New York, on October 8, 1936.

I am writing you to ascertain if you will cooperate, as pledgee of these bonds, on behalf of the Western Pacific, with the other two parent companies and the Traction Company in obtaining a release from the lien of Traction Company's First Mortgage, dated September 1, 1906, of certain property consisting of railway track, including track crossings, overhead transmission and trolley wires, poles and fixtures appertaining thereto. No land is involved, as the tracks and accessories are in city streets, and the underlying land is used under a franchise. The property has been conveyed by Traction Company to Stockton Electric Railroad Company but the lien of the Traction Company's First Mortgage has not yet been released. The pertinent facts affecting this transaction are as follows:

Until 1927, Central California Traction Company was an independent electric railroad, operating a freight and passenger railway between Stockton, San Joaquin County, and Sacramento, Sacramento County, California (with a mileage in excess of 52 miles).

On July 3, 1925, Southern Pacific Company entered into an agreement with Herbert Fleishhacker, of San Francisco, the then owner of all of the outstanding capital stock of Central California Traction Company and of more than 70% of the First Mortgage bonds of Traction Company, for the purchase and sale of said stock and bonds to Southern Pacific Company on the terms specified therein. Thereupon, the Southern Pacific Company applied to the Interstate Commerce Commission (Finance Docket No. 5008) for authority to acquire control of Central California Traction Company by such acquisition of its capital stock, etc. The Atchison, Topeka and Santa Fe Railway Company and The Western Pacific Railroad Company (and its subsidiaries Sacramento Northern Railway and Tidewater Southern Railway Company), all intervened in the proceeding before the Interstate Commerce Commission, opposing the merger of [1114] the Traction Company's line with that of Southern Pacific (the Santa Fe petitioning to itself acquire control of the Traction Company if the Interstate Commerce Commission found the public interest would be served by a merger of the Traction Company's line with a larger railway system capable of

efficiently maintaining and operating the property). The Western Pacific also filed an independent petition to construct a line of railroad in the event that the line of the Traction Company by any means became other than an independent line free of control by any interstate railroad company.

The Interstate Commerce Commission gave its decision on August 5, 1927, authorizing the Southern Pacific Company to acquire control of Central California Traction Company by purchase of stock and bonds, as set forth in the agreement with Mr. Fleishhaecker (of July 3, 1925)

“Provided, however, and the authority herein granted is upon the express condition, that, within 60 days from and after the date hereof, the Southern Pacific Company shall admit the Western Pacific Railroad Company and the Atchison, Topeka & Santa Fe Railway Company, or either of them, as those carriers respectively may thereto consent, to participation equally with said Southern Pacific Company in joint control of said Central California Traction Company upon payment of proportionate shares of the cost of the securities to be acquired; the division of said capital stock of said Central California Traction Company among said Southern Pacific Company, Western Pacific Railroad Company, and Atchison, Topeka & Santa Fe Railway Company to be in equal one-third shares, or, if either of the two carriers last named elect not to participate in such

joint control of said Central California Traction Company, then the division of said stock between the other of said carriers and said Southern Pacific Company to be in equal one-half shares; and said bonds to be divided among, or between, the carriers joining in control of said Central California Traction Company as among, or between, the participants in such joint control may be agreed, or, failing such agreement, then, as nearly as may be according to the division of capital stock herein required."

Both Santa Fe and Western Pacific indicated their intention to participate equally with Southern Pacific Company in joint control of Traction Company upon payment of proportionate shares, etc.

The three trunk lines, however (Southern Pacific, Santa Fe and Western Pacific), while they agreed in principle on the proposition of jointly acquiring control of the Traction Company, were unable to reach an agreement with respect to the value to be assigned in the transaction of the \$2,200,000 of Pacific Electric Railway bonds involved in the contract of July 3, 1925 between Southern Pacific and Fleishhacker, above [1115] mentioned (the contract under which Southern Pacific derived its right to acquire control of Traction Company, subject to Interstate Commerce Commission authorization).

It was, therefore, considered advisable that the Southern Pacific and Fleishhacker enter into a

new contract whereunder the point of controversy would be eliminated. Such an agreement was made under date of October 31, 1927, the new contract providing that Fleishhacker would sell to the Southern Pacific, as of December 31, 1927, all the outstanding stock and bonds of Traction Company for a cash sum (\$2,650,000), Fleishhacker guaranteeing that Traction Company on that date would have no indebtedness of any character except the principal amount of the outstanding bonds and a proportionate amount of property tax liability, Fleishhacker also agreeing to cure, within a stated time, any defects or encumbrances affecting lands or right of way of the Traction Company. In consideration of the guaranties thus personally assumed by Fleishhacker the Southern Pacific agreed that the Traction Company, prior to the consummation of the transfer of the stock and delivery of the bonds, would convey to Fleishhacker the title to all its electric railway properties in the City of Stockton (with certain exceptions and reservations), Fleishhacker in turn to sell such properties to the Stockton Electric Railroad Company in consideration of the delivery to him of \$100,000 of Pacific Electric Railway First Refunding and Mortgage Bonds.

The Western Pacific and Santa Fe concurrently executed an instrument in writing on October 31, 1927, annexed to said agreement of October 31, 1927 between Fleishhacker and Southern Pacific, signifying their intention to participate equally with the

Southern Pacific in joint control of the Traction Company by payment of one-third each of the cash purchase price, and the Southern Pacific Company endorsed on said instrument of the Western Pacific and Santa Fe its approval and agreement therewith. This instrument signifying intention to participate also contained agreements on the part of the Southern Pacific. A copy of the agreement of July 3, 1925, and of the partially superseding agreement of October 31, 1927, and of the annexed instrument of intention to participate, are enclosed herewith.

Said instrument, signifying intention to participate, among other things, provided

“Southern Company, Atchison Company and Western Company hereby agree that, as soon as all the outstanding bonds of the Traction Company have been delivered to the Atchison company, Western Company and/or Southern Company, the properties agreed to be sold to Stockton Electric Railroad Company by Herbert Fleishhacker under the foregoing agreement, shall be released from the lien of the existing bond issue.”

The three trunk lines thereupon applied to the Interstate Commerce Commission for modification of the order of [1116] August 5, 1927, in Finance Docket No. 5008, in the light of their inability to agree on value under the agreement of July 3, 1925, and submitted the partially superseding new agreement of October 31, 1927 and its annexed instru-

ment signifying intention and requested authorization and approval of the Interstate Commerce Commission to the purchase on the terms stated in the agreement of October 31, 1927, the Southern Pacific agreeing that immediately upon acquisition of the carrier's stock and bonds, it would admit the Western Pacific and Santa Fe to participation equally with the Southern Pacific upon payment by each of those carriers of one-third of the cash price (\$2,650,000) or such lesser sum as should represent the ultimate cost to the Southern Pacific of acquiring Traction Company's securities.

The Interstate Commerce Commission, by its supplemental Report and Order of November 28, 1927, in Finance Docket No. 5008, recited the provisions of the modifying agreement of October 31, 1927, and approved the terms and conditions so proposed by the three trunk lines for the acquisition of control of Traction Company, and held them just and reasonable in the premises, and authorized the consummation of control on such basis.

The Supplemental Report of the Interstate Commerce Commission recited the proposed conveyance to Fleishhacker by Traction Company of title to all its electric railway properties in the City of Stockton (with certain exceptions and reservations) and the intended sale by Fleishhacker in turn of such properties to the Stockton Electric Railroad Company, and that such transfer by Traction Company was in consideration of the guaranties personally assumed by Fleishhacker, and the consideration for

Fleishhacker's sale thereof to Stockton Electric Railroad Company was the delivery to him of \$100,000 of Pacific Electric Railway First Refunding and Mortgage Bonds.

Traction Company did convey the electric railway properties in the City of Stockton to Fleishhacker as provided in the agreement of October 31, 1927, and Mr. Fleishhacker sold such lines to Stockton Electric Railroad Company, but the interests conveyed were not released from Traction Company's First Mortgage. As provided in said agreement of October 31, 1927, an *undivided one-half interest* in certain trackage in the City of Stockton was conveyed to Fleishhacker and by him conveyed to Stockton Electric Railroad Company, where such lines were used jointly by Traction Company and Stockton Electric Railroad Company (including certain trackage on Weber Avenue between Sacramento and El Dorado Streets, the property now under consideration). [1117]

In February, 1933, Traction Company itself discontinued its passenger operations in the City of Stockton, which rendered the one-half interest retained by it in such trackage useless to it, and subsequently, on October 23, 1934, also conveyed its remaining one-half interest therein to Stockton Electric Railroad Company. Neither the one-half interest in said trackage conveyed in 1927, nor the one-half interest conveyed on October 23, 1934, has been released from Traction Company's First Mortgage. Had Traction Company not made the

transfer of the remaining one-half interest in this trackage to Stockton Electric Railroad in 1934, it would have been under the obligation of sharing the expense of maintaining a non-profitable facility or of sharing in the expense of dismantling and removing the trackage and all other equipment, and of restoring the street from which removal had been made, at a cost that would have exceeded its share of the salvage value of all trackage and other property removed. It, therefore, conveyed its remaining one-half interest to Stockton Electric Railroad Company *free of cost*; the consideration moving to Traction Company in the transaction lying in the fact that by such conveyance it was spared expense in the amount of about \$6,000 by which its share of the cost of removal and restoration would have exceeded its share of the salvage value realized for all trackage and other property in the trackage in question.

Stockton Electric Railroad Company now requests the release from the lien of Traction Company's First Mortgage of the whole of the track on Weber Avenue, between Sacramento and El Dorado Streets, in the City of Stockton. By the terms of the instrument of October 31, 1927, signifying intention to participate equally in control of Traction Company, both Western Pacific and Santa Fe (along with Southern Pacific Company) stand obligated to see that the Traction Company trackage conveyed pursuant thereto to Stockton Electric Railroad Company is released from the

Traction Company mortgage lien "as soon as all the outstanding bonds of Traction Company have been delivered to" the three trunk lines. This has now occurred, as all publicly owned bonds were redeemed on their maturity on April 1, 1936.

The three parent companies (the Western Pacific, of course, functioning through its Reorganization Trustees) are desirous that this release of trackage from the Traction Company First Mortgage be effected, and caused the Traction Company officers to communicate with its First Mortgage Trustee, for such purpose. Copies of the relevant correspondence are enclosed, which present the complete picture.

The successor Trustee under Traction Company's First Mortgage, Wells Fargo Bank and Union Trust Co. of San Francisco, has outlined certain requirements as a condition to its execution of release of said property from the Traction Company's Mortgage, in view of the fact that no monetary consideration was received by Traction Company on the conveyance, and, therefore, technically Article IV (copy of which is annexed to the correspondence) of the Traction Company Mortgage can not be exactly complied with. However, real and valuable considerations accrued to Traction Company both in 1927 on the conveyance of one-half thereof, when its liens and encumbrances were contracted to be cleared by Fleishacker (which was done) and its indebtedness was paid, and in 1934 on the conveyance of the remain-

ing one-half thereof when it saved a considerable sum by ceasing to own an interest in the trackage in question.

The Traction Company Mortgage Trustee requests that the three parent companies furnish it a formal request for reconveyance, and that all of the outstanding bonds of Traction Company be presented to its bank correspondent in New York for appropriate endorsement thereon relative to this release (reconveyance). It has notice that the Western Pacific Holdings of Traction Company bonds are pledged under the Western Pacific General and Refunding Mortgage, of which you are successor Trustee. As the letter of January 27, 1937, from the Traction Company's Mortgage Trustee, to Mr. Hayden, Vice-President of the Traction Company, indicates, if the Western Pacific's General and Refunding Mortgage Trustee informs the Wells Fargo Bank that it has no objection to urge to the reconveyance, but that it cannot either request the reconveyance or present the bonds held by it for endorsement, then the Wells Fargo Bank requests as a condition of making the conveyance that it be furnished full indemnity by Santa Fe and Southern Pacific or either of them.

Article Six of the Western Pacific General and Refunding Mortgage, the article dealing with pledged securities, contains no prohibition of the co-operation being requested of you. The last paragraph of Section 5 of Article Six provides: (page 118)

"Subject only to the actual exercise by the Company of rights in respect thereof conferred by this indenture, the Trustee shall have, and may exercise, all the rights of owner in respect of any bonds, obligations or stock or certificates of interest therein, held by the Trustee under this indenture or in any manner whatsoever on the trusts hereof."

Section 6 of Article Six also provides: (page 120)

"The Trustee, with the consent of the Company, [1119] at any time may vote upon any shares of stock that shall be held by the Trustee hereunder, and the Trustee may take such other action as in its discretion it shall deem advisable, to protect its interest and the interests of the holders of the General and Refunding Bonds in respect of any bonds, obligations or stock subject to the lien hereof; * * *"

Section 7 of Article Six provides: (page 122)

"Nothing herein contained shall prevent (1) the renewal or extension, on any terms, of any bond or obligation secured by mortgage upon the property of any controlled company of the Company or of any other bond or obligation pledged or assigned hereunder; * * *"

Article Six permits the Trustee (and the Company when not in default) to exercise broad discretion and co-operation as to the companies whose

securities are pledged under the General and Refunding Mortgage, such as participation in reorganizations of such companies, whether "controlled companies" or not, exchange of obligations for substitute obligations, co-operation in merger or consolidation of non-controlled companies, cancellation of obligations of "controlled companies", extension of maturity of obligations, etc., etc.—the spirit of the article being flexible enough to meet unpredictable contingencies affecting the companies whose securities are so pledged under the General and Refunding Mortgage.

I believe a study of these papers will indicate clearly that the Western Pacific assumed a contractual obligation to co-operate to procure the release from Traction Company's mortgage of the one-half interest in this trackage, etc., specified in the agreement of October 31, 1927, and that the conveyance of the other one-half interest was for the benefit of the Traction Company (and consequently of its bondholders and its stockholders), and conserved its resources and saved its money,—and that under these circumstances there can be no possible damage or claim by anyone, Traction Company bondholder or otherwise, by releasing the whole of this trackage from the lien of the Traction Company's Mortgage. The General and Refunding Mortgage is a first lien on the Western Pacific's holding of Traction Company capital stock, which, except for directors' qualifying shares, is physically pledged with you as Trustee. The only other stock-

holders (subject to directors' qualifying shares) are the two other parent companies, Southern Pacific and Santa Fe,—each [1120] of the three parent companies having identical stockholdings. That the requested co-operation is not only harmless but desirable is further indicated by the willingness of the other two bondholders (Southern Pacific and Santa Fe) whose Traction bonds are in their own possession, and who presumably are diligent to protect their property and rights, to facilitate the requested release and reconveyance, and to present their Traction bonds for the requested endorsement.

The order of said Federal Court of August 2, 1935, accepting jurisdiction of the reorganization proceeding, enjoined all persons and corporations holding collateral therefore pledged by the debtor as security for its obligations from selling, converting or otherwise disposing of such collateral, or any part thereof, until further order of said court. The proposed presentation for endorsement of the Traction Company bonds, held in pledge by you could not be construed as a sale, conversion, or disposition thereof. I feel reasonably certain the Court would specifically authorized you to make such a presentation for endorsement under these circumstances, if petitioned to do so.

Parity has existed between the three parent companies from the beginning, and has been scrupulously maintained throughout the years of joint ownership. The United States District Court here which has jurisdiction of the Western Pacific

reorganization proceeding made a special order permitting the Western Pacific Reorganization Trustees to make such advances and payments as might be necessary to protect Debtor's interest therein or to meet its contractual pro rata obligation as to Traction Company (and other affiliates with similar situation).

It would in my opinion be not only unfair and unjust to Southern Pacific and/or Santa Fe to compel them to furnish indemnity in this matter because the Western Pacific is unable to co-operate, but would also be most unfortunate and establish a precedent with possibly far-reaching consequences to the future owner of the Western Pacific's Traction Company holdings—for one of the three owners to abandon its participation and parity in all Traction Company dealings—especially as the interest the Western Pacific and Santa Fe acquired in Traction Company was solely because the Interstate Commerce Commission compelled the Southern Pacific to permit the participation.

For this reason I have addressed you very fully in the premises, and I would appreciate receiving from you advice as to whether you are willing to present the Traction Company bonds pledged with you for endorsement, as requested by the Traction Company mortgage Trustee.

Very truly yours,

HPT:PB

CHARLES ELSEY

Encls. [1121]

EXHIBIT J

Standard Realty and Development Company
General Balance Sheet, as of October 31, 1939

ASSETS

Investments:

Real Estate and Improvements	\$812,996.60
Capital Stock Indian Valley RR. Co. (750 Shares Common Stock)	\$ 69,480.00
Reserve for Revaluation of Capital Stock—Indian Valley RR. Co.	68,480.00 1,000.00
Capital Stock—Tidewater Southern Ry. Co.	11,287.40

Total \$825,284.00

Current Assets:

Cash in Hands of Treasurer	12,003.77
Individuals and Companies	701.09
Van Noy Interstate Company	110,000.00
Notes Receivable—C. C. Rummer	400.00
Prepaid Insurance Premiums	367.88
Prepaid Taxes	309.77

Total \$123,782.51

Grand Total \$949,066.51

LIABILITIES

Capital:	
Capital Stock	\$500,000.00
Less Capital Stock in Treasury	99,500.00

Total \$400,500.00

Current Liabilities:

Audited Accounts Payable	\$ 6,179.67
Loans and Nptes Payable	724,583.93
Estimated Liabilities Crossings & Culverts	6,300.00

Total \$737,063.60

Unadjusted Credits:

None.

[1122]

Profit and Loss:

Profit and Loss—Reserve for Revaluation
of Capital Stock of the Indian Valley RR.

Company \$ 1,875.00

Profit and Loss Balance December 31, 1933 183,678.28*

Balance Transferred from Income 6,693.81*

Profit and Loss Balance January 1st to Oct.

31st, 1939 188,497.09*

Grand Total \$949,066.51

* Denotes red figures.

[1123]

EXHIBIT K

HIGH, LOW AND TOTAL SALES
DEBTOR'S FIRST MORTGAGE 5% BONDS
SIX MONTHS PERIODS 1923-1929

Year	First Six Months			Last Six Months		
	High	Low	Sales 000	High	Low	Sales 000
1923	85	78 1/2	871	83 1/2	78	706
1924	90	79 1/2	1,701	93 1/4	88 1/2	2,342
1925	96	90 3/4	2,209	97 7/8	92 1/2	1,335
1926	100 7/8	95 7/8	1,915	100	98	936
1927	100 1/8	99 1/8	949	101	98 1/8	928
1928	101	98 1/2	1,301	101	97	834
1929	100	95	636	99	94 1/2	701

[1124]

EXHIBIT K

Sheet 2

HIGH, LOW, AND TOTAL SALES
DEBTOR'S FIRST MORTGAGE 5% BONDS
FOR EACH MONTH 1930-1939

1930				1931				1932				1933			
Month	High	Low	Sales 000	High	Low	Sales 000		High	Low	Sales 000		High	Low	Sales 000	
Jan	99	98	88	97	92½	191		46	28	206		293½	24	258	
Feb	98¼	97	96	95	92	159		47	39	204		283¼	22	136	
Mar	98¾	97½	624	95	88½	130		49	35¼	204		267½	23¼	15	
Apr	99	98¼	310	90	75	132		36	30	99		297½	20½	279	
May	98½	96	154	83¼	74¾	142		30½	23	161		29	27¼	593	
Jun	97½	95½	108	76½	68¼	204		31	217½	191		44½	36½	645	
Jul	98½	96½	146	81	76	155		35	26	125		58	43	911	
Aug	99¾	98	285	76½	65	95		52¾	33	555		51	31	1,440	
Sep	99½	98¾	425	65	57	143		44½	36	404		42½	36	383	
Oct	99½	95½	140	63	53	132		37	293½	139		38½	33	200	
Nov	97¾	907½	184	60¾	48½	112		34	30	178		33½	28	306	
Dec	95¼	867½	239	49½	30	224		305½	23½	259		38	31¼	519	

1934				1935				1936				1937			
Month	High	Low	Sales 000	Month	High	Low	Sales 000	Month	High	Low	Sales 000	Month	High	Low	Sales 000
Jan	39	30	1,384	Jan	37	31½	203	Jan	43½	35¾	1,110	Jan	40¼	35½	653
Feb	46¾	32¼	2,135	Feb	34	29	178	Feb	44	37	954	Feb	40¾	35½	601
Mar	42	34¼	1,194	Mar	33	26	199	Mar	38¼	34	546	Mar	40½	35½	598
Apr	40½	37½	921	Apr	29¾	25	132	Apr	40¼	34	531	Apr	37	34	513
May	38	34¾	790	May	29½	27	105	May	36	32½	441	May	35¼	32½	342
Jun	39¾	36½	277	Jun	34½	27½	325	Jun	36	337½	356	Jun	33½	28½	405
Jul	40½	34½	482	Jul	34	31½	244	Jul	36	32½	309	Jul	32½	29	267
Aug	40	34½	230	Aug	35	30½	178	Aug	36½	34	403	Aug	32¼	29¾	172
Sep	40	34½	161	Sep	31	28½	146	Sep	38¾	35	720	Sep	29¾	24	367
Oct	38	33¾	261	Oct	29	26	213	Oct	397½	36	515	Oct	25½	16½	642
Nov	37	33½	162	Nov	35	27½	848	Nov	36¼	33½	308	Nov	19¾	17	237
Dec	36	31	241	Dec	38½	32¼	523	Dec	38	32¾	736	Dec	20	17½	572

1938

1939

Month	High	Low	Sales 000	Month	High	Low	Sales 000
Jan	21	17	189	Jan	23½	18½	131
Feb	20½	18¾	123	Feb	20	18	110
Mar	20	15¼	222	Mar	20	16	185
Apr	17½	16	86	Apr	16½	13¾	70
May	20	15¼	161	May	15½	13¼	113
Jun	20	16	197	Jun	15¾	14	952

HIGH, LOW, AND TOTAL SALES
DEBTOR'S FIRST MORTGAGE 5% BONDS
FOR EACH MONTH 1930-1939

1930				1931			1932			1933		
Month	High	Low	Sales 000	High	Low	Sales 000	High	Low	Sales 000	High	Low	Sales 000
Jan	99	98	88	97	92½	191	46	28	206	29¾	24	258
Feb	98¼	97	96	95	92	159	47	39	204	28¾	22	136
Mar	98¾	97¾	624	95	88¾	130	49	35¼	204	26¾	23¾	15
Apr	99	98¼	310	90	75	132	36	30	99	29¾	20½	279
May	98½	96	154	83¼	74¾	142	30¾	23	161	29	27¼	593
Jun	97½	95½	108	76½	68½	204	31	21¾	191	44½	36½	645
Jul	98½	96½	146	81	76	155	35	26	125	58	43	911
Aug	99¾	98	285	76½	65	95	52¾	33	555	51	31	1,440
Sep	99¾	98¾	425	65	57	143	44½	36	404	42½	36	383
Oct	99½	95½	140	63	53	132	37	29¾	139	38½	33	200
Nov	97¾	90¾	184	60¾	48½	112	34	30	178	33½	28	306
Dec	95¼	86¾	239	49½	30	224	30¾	23½	259	38	31¼	519

1934				1935			1936			1937		
Month	High	Low	Sales 000	High	Low	Sales 000	High	Low	Sales 000	High	Low	Sales 000
Jan	39	30	1,384	37	31½	203	43½	35¾	1,110	40¼	35½	653
Feb	46¾	32¼	2,135	34	29	178	44	37	954	40¾	35½	601
Mar	42	34¼	1,194	33	26	199	38¼	34	546	40½	35¾	598
Apr	40½	37½	921	29¾	25	132	40¼	34	531	37	34	513
May	38	34¾	790	29½	27	105	36	32¼	441	35¼	32½	342
Jun	39¾	36½	277	34½	27½	325	36	33¾	356	33½	28½	405
Jul	40½	34½	482	34	31½	244	36	32½	309	32½	29	267
Aug	40	34½	230	35	30½	178	36½	34	403	32¼	29¾	172
Sep	40	34½	161	31	28¾	146	38¾	35	720	29¾	24	367
Oct	38	33¾	261	29	26	213	39¾	36	515	25½	16½	642
Nov	37	33½	162	35	27½	848	36¼	33½	308	19¾	17	237
Dec	36	31	241	38½	32¼	523	38	32¾	736	20	17¾	572

1938				1939		
Month	High	Low	Sales 000	High	Low	Sales 000
Jan	21	17	189	23½	18½	131
Feb	20½	18¾	123	20	18	110
Mar	20	15¼	222	20	16	185
Apr	17¾	16	86	16½	13¾	470
May	20	15¼	161	15½	13¼	113
Jun	20	16	197	15¾	14	252
Jul	20¼	17	211	18	15	49
Aug	26	18¾	149	18	16¼	176
Sep	24¼	19	154	24	16	545
Oct	24½	20	283	22	20	195
Nov	26¾	21	363	21¼	18¾	244
Dec	23½	20	542			

EXHIBIT L

TOTAL OPERATING REVENUES OF THE WESTERN PACIFIC
RAILROAD SYSTEM (†) AND CLASS I RAILROADS
OF THE UNITED STATES (†)
(Revenues shown in Thousands)

Assumed "Normal" Period				
Class I Railroads of United States (†)			The Western Pacific System	
	Revenues	% of Assumed Normal Period	Revenues	% of Assumed Normal Period
	(000)		(000)	
1923	\$6,289,580	101.92%	\$14,415	88.72%
1924	5,921,496	95.96	14,669	90.28
1925	6,122,509	99.22	15,899	97.85
1926	6,382,939	103.44	17,951	110.48
1927	6,136,300	99.44	18,306	112.67
5-Yr. Av.	\$6,170,565	100.00%	\$16,248	100.00%

After Assumed "Normal" Period

Class I Railroads
of

United States. (†)

The Western Pacific Railroad System (‡)

	Revenues	% of Assumed Normal Period	W. P. Excl. N. C. E. Revenues	% of Assumed Normal Period	Add. for N. C. E. (*)	W. P. Incl. N. C. E. Revenues	% of Assumed Normal Period
	(000)		(000)		(000)	(000)	
1928	\$6,111,735	99.04%	\$19,422	119.53	\$ —	\$ —	— %
1929	6,279,521	101.76	20,097	123.69	—	—	—
1930	5,281,197	85.58	18,810	115.82	—	—	—
1931	4,188,343	67.87	14,688	90.40	165	14,853	91.41
1932	3,126,760	50.57	11,018	67.81	1,233	12,251	75.40
1933	3,095,404	50.16	10,711	65.92	1,491	12,202	75.10
1934	3,271,566	53.02	11,660	71.76	2,119	13,779	84.80
1935	3,451,929	55.94	12,117	74.58	2,290	14,407	88.67
1936	4,052,734	65.08	13,395	82.44	3,152	16,547	101.84
1937	4,166,069	67.52	14,492	89.19	3,426	17,918	110.28
1938	3,565,491	57.78	12,963	79.78	3,094	16,057	98.82

Source:—Class I revenues, 1923-1937 taken from I. C. C. Statistics of Railways, and 1938 revenues taken from Bureau of Railway Economics statements:

†The Western Pacific Railroad System is comprised of

The Western Pacific R. R. Co.,

Sacramento Northern Railway,

Tidewater Southern Railway Co.,

Deep Creek Railroad Company.

‡Excludes Switching and Terminal Companies.

*Northern California Extension (NCE) placed in freight service Nov. 10, 1931.

EXHIBIT M

United States District Court

No. 26591

In re:

WESTERN PAC. R. R. CO.

INST. FIRST MORTGAGE BONDHOLDERS

COMMITTEE EXHIBIT NO. 1

NET RAILWAY OPERATING INCOME

THE WESTERN PACIFIC RAILROAD SYSTEM (A)

AND

CLASS I RAILROADS OF THE UNITED STATES (B)

Year	Assumed "Normal" Period			
	Class I Railroads of United States		Western Pacific System As Reported	
	Net Railway Operating Income	% of Assumed Normal Period	Net Railway Operating Income	% of Assumed Normal Period
	(000)		(000)	
1923	\$ 961,955	90.11%	\$3,064	85.90%
1924	973,837	91.22	3,024	84.78
1925	1,121,076	105.01	4,384	122.90
1926	1,213,090	113.63	4,727	132.52
1927	1,067,985	100.04	2,687	73.93
5-Yr Aver	\$1,067,589	100.00%	\$3,567	100.00%

After Assumed "Normal" Period				
Year	Class I Railroads of United States		Western Pacific System As Reported	
	Net Railway Operating Income	% of Assumed Normal Period	Net Railway Operating Income	% of Assumed Normal Period
	(000)		(000)	
1928	\$1,172,864	109.86%	\$2,853	79.98%
1929	1,251,698	117.25	2,420	67.81
1930	868,879	81.39	1,569	43.99
1931	525,628	49.24	71 (C)	—
1932	326,298	30.56	360	10.09
1933	474,296	44.43	805	22.57
1934	462,652	43.34	1,222	34.26
1935	499,819	46.82	933	26.16
1936	667,347	62.51	3	—
1937	590,204	55.28	1,030	—
1938	372,845	34.92	1,307	—

Assumed "Normal" Period				
Year	Class I Railroads of United States		Western Pacific System Excluding Effect of Program Operating Expenses in 1927	
	Net Railway Operating Income	% of Assumed Normal Period	Net Railway Operating Income	% of Assumed Normal Period
	(000)		(000)	
1923	\$ 961,955	90.11%	\$3,064	82.70%
1924	973,837	91.22	3,024	81.62
1925	1,121,076	105.01	4,384	118.33
1926	1,213,090	113.63	4,727	127.58
1927	1,067,985	100.04	3,324	89.72
5-Yr. Aver	\$1,067,589	100.00%	\$3,705	100.00%

After Assumed "Normal" Period				
Year	Class I Railroads of United States		Western Pacific System Excluding Effect of Program Operating Expenses—Note D	
	Net Railway Operating Income	% of Assumed Normal Period	Net Railway Operating Income	% of Assumed Normal Period
	(000)		(000)	
1928	\$1,172,864	109.86%	\$4,159	112.25%
1929	1,251,698	117.25	3,495	94.33
1930	868,879	81.39	2,280	61.54
1931	525,628	49.24	52 (C)	1.40
1932	326,298	30.56	304	8.21
1933	474,296	44.43	770	20.78
1934	462,652	43.34	1,384	37.35
1935	499,819	46.82	1,369	36.95
1936	667,347	62.51	1,582	42.70
1937	590,204	55.28	815	22.00
1938	372,845	34.92	31	.84

Source:—Class I Railroads' Net Railway Operating Income figures for 1923-1937 taken from I. C. C. Statistics of Railways, and 1938 figures taken from I. C. C. Statement No. M-125 for December, 1938, (issued subject to revision), being statement of selected income and balance sheet items.

General Notes:—Prior to January 1, 1936, rentals from lease of Western Pacific owned refrigerator cars to the Pacific Fruit Express Company have been credited to Hire of Equipment, but effective January 1, 1936, such rentals were credited to Non-Operating Income.

Italics denote red.

Note A:—The Western Pacific Railroad System is comprised of the following:

The Western Pacific Railroad Company
 Sacramento Northern Railway
 Tidewater Southern Railway Company
 Deep Creek Railroad Company

Note B:—Excludes switching and terminal companies.

Note C:—Northern California Extension (increasing miles of road operated by 111.81 miles) placed in freight service November 10, 1931.

Note D.—Extraordinary work executed during 1927-1932, inclusive, was characterized as the "Improvement Program". Such work executed during 1933-1935, inclusive, was not under a specific program. Work executed during 1936-1988, inclusive, was characterized as the "Rehabilitation Program".

Office of the President,
The Western Pacific RR Co.,
San Francisco, California,
January 4th, 1939.

Counsel for Trustees.

Counsel for Institutional
Bondholders Committee.

Counsel for The Western Pa-
cific Railroad Corporation.

[Endorsed]; Filed 1/22/1940. Walter B. Maling,
Clerk. By C. W. C., Deputy Clerk. [1127]

EXHIBIT N

MEMORANDUM OF CORRECTIONS AND CHANGES IN "STIPULATION AS TO FACTS NOT IN DISPUTE".

[Note: This Exhibit has been omitted because corrections listed therein have been made in the "Stipulation as to Facts Not in Dispute" and to set out here would be needless duplication.]

Wednesday, December 20, 1939.

Before Hon. A. F. St. Sure, District Judge.

26591—In re Western Pac. R. R. Co. Dr.

PRE-TRIAL CONFERENCE

The parties being present as heretofore the pre-trial conference was resumed.

Robert T. Swain, Esq. advised the court that the various counsel had agreed on a stipulation as to the facts not in dispute and presented the said stipulation to the Court. Ordered said stipulation filed & made a part of the record.

After hearing the attorneys It is ordered that this case be set for January 22nd, 1940, for hearing, on objections to plan of reorganization certified to the court by the Interstate Commerce Commission.

[1134]

[Title of District Court and Cause.]

ORDER FIXING A DATE FOR HEARING PARTIES IN INTEREST IN SUPPORT OF OR IN OPPOSITION TO OBJECTIONS FILED HEREIN TO THE PLAN OF REORGANIZATION CERTIFIED BY THE INTERSTATE COMMERCE COMMISSION; FIXING A DATE FOR HEARING ON PETITIONS FOR ALLOWANCE OF COMPENSATION OR EXPENSES FILED HEREIN; AND PROVIDING FOR THE GIVING OF DUE NOTICE TO ALL

PARTIES IN INTEREST OF SAID HEARING ON SUCH OBJECTIONS TO THE PLAN OF REORGANIZATION AND OF SAID HEARING ON SAID PETITIONS.

This Court having made and entered its order of November 8, 1939, fixing the time within which objections to the Plan of Reorganization certified to this Court by the Interstate Commerce Commission may be filed herein and fixing the time within which petitions for allowance of compensation and expenses may be filed herein, and [1135]

It Appearing that objections to such Plan of Reorganization and claims for equitable treatment have been filed herein by various parties in interest pursuant to said order of November 8, 1939, and

It Further Appearing that petitions for allowance of compensation for services rendered or expenses (including reasonable attorneys' fees) incurred have been filed herein by various parties pursuant to said order,

Now, Therefore, it is hereby

Ordered:

1. That the hour of 10:00 A. M., on Monday, January 22, 1940, is hereby fixed as the time, and the court room of this Court in the United States Post Office and Court House Building in the City and County of San Francisco, State of California, as the place, for hearing all parties in interest in support of, or in opposition to, any and all objections to said Plan of Reorganization and any and all claims for equitable treatment and any and all

petitions for allowance of compensation and expenses (including reasonable attorneys' fees) that have been filed herein pursuant to said order of November 8, 1939, provided, however, that such hearing may be adjourned from time to time without further notice, if the Court shall so direct.

2. That T. M. Schumacher and Sidney M. Ehrman, the Trustees of the properties of the Debtor herein, shall forthwith give notice of the entry of this order and of the provisions hereof (a) by mailing a copy of this order by registered mail, postage prepaid, to the Debtor, the Interstate Commerce Commission, The Western Pacific Railroad Corporation, each and every party whose appearance has been filed herein [1136] or who is a party of record in this reorganization proceeding, each and every other party to whom notices have heretofore been given, and each and every trustee named in any mortgage or other instrument securing any of the Debtor's bonds, notes, or other obligations, including obligations of guaranty, and (b) by publishing a notice substantially in the form of Schedule A hereto in The Wall Street Journal (Pacific Coast Edition), and The Recorder, two newspapers of general circulation published in the City and County of San Francisco, State of California, and in The New York Times and The New York Sun, two newspapers of general circulation published in New York City, New York, such publications to be made once in each of such four newspapers not later than January 3, 1940.

Said Trustees shall file in these proceedings proper proof of the serving of copies of this order and of the publication of said notice as above directed.

Dated, December 21, 1939.

A. F. ST. SURE,

Judge, United States District Court for the Northern District of California, Southern Division. [1137]

SCHEDULE A.

(Form of Notice.)

[Title of District Court and Cause.]

To Holders of Securities of the Western Pacific Railroad Company and All Parties in Interest in the Above Entitled Proceedings:

Pursuant to an order of the Court entered December 21, 1939, in the above entitled proceeding, notice is hereby given that:

The hour of 10:00 A. M., on Monday, January 22, 1940, has been fixed as the time, and the court room of the Honorable A. F. St. Sure, Judge, of the above entitled court, in the United States Post Office and Court House Building, in the City and County of San Francisco, State of California, as the place, for hearing all parties in interest in support of, or in opposition to, any and all objections

to the Plan of Reorganization certified to the Court by the Interstate Commerce [1138] Commission and any and all claims for equitable treatment that have been filed herein pursuant to the Court's order of November 8, 1939, and any and all petitions for allowance of compensation and expenses (including reasonable attorneys' fees) that have been filed herein pursuant to said order, provided, however, that such hearing may be adjourned from time to time without further notice.

By order of the Court.

Dated: December 21, 1939.

**T. M. SCHUMACHER
SIDNEY M. EHRMAN**

Trustees of the properties of
The Western Pacific Railroad
Company.

[Endorsed]: Filed Dec. 21, 1939. [1139]

[Title of District Court and Cause.]

ORDER

It Appearing that objections to the Plan of Reorganization certified to this Court by the Interstate Commerce Commission and claims for equitable treatment were filed herein by various parties pursuant to the Court's order of November 8, 1939, fixing the time within which objections to said Plan of Reorganization may be filed; and

It Further Appearing that thereafter, pursuant to Rule 16 of the Rules of Civil procedure for the District Courts of the United States, this Court directed the attorneys for the parties in interest to appear before it on December 18, 1939, at 10 o'clock A. M. for a Pre-Trial Conference [1140] to consider the following objectives:

- (1) The simplification of the issues;
- (2) The ascertainment of what material facts exist without substantial controversy and what material facts are actually and in good faith controverted;
- (3) The possibility of obtaining admissions of fact and of documents which will avoid unnecessary proof;
- (4) The determination of such other matters as may aid in the expedition and disposition of the cause;

And It Further Appearing that at the time so appointed such Pre-Trial Conference was held and that, in the course thereof, there was filed with the Court a written Stipulation as to the facts not in dispute, signed by the attorneys for the Debtor, the Institutional First Mortgage Bondholders' Committee, Samuel Armstrong and Crocker First National Bank of San Francisco, Trustees under the Indenture securing the Debtor's First Mortgage Bonds, The Western Pacific Railroad Corporation, A. C. James Co., Irving Trust Company, Trustee under the Indenture securing the Debtor's General

and Refunding Mortgage Bonds, Reconstruction Finance Corporation, Railroad Credit Corporation, and The Western Realty Company, subject to the provision of said Stipulation that "any party may call witnesses and offer any proof for the purpose of proving such additional facts as such party may see fit, free from the objection that such additional facts tend to limit, control or qualify facts herein set forth";

Now, Therefore, the Court having by its Order of December 21, 1939, fixed January 22, 1940, as the date for hearing all parties in interest in support of, or in opposition to, objections to said Plan of Reorganization and claims for equitable treatment and provided for the giving of due notice to all parties in interest of said hearing, [1141]

It Is Hereby Ordered, pursuant to and in conformity with said Rule 16 of said Civil Rules of Procedure, that the issues for trial at said hearing on January 22, 1940, shall be the issues raised and presented by said objections to said Plan of Reorganization and by said claims for equitable treatment.

Dated December 29, 1939.

A. F. ST. SURE,

Judge.

[Endorsed]: Filed Dec. 29, 1939. [1142]

[Title of District Court and Cause.]

TRANSCRIPT OF TESTIMONY

INTRODUCED ON

MONDAY, JANUARY 22, 1940 [1143]

Counsel Appearing:

For T. M. Schumacher and Sidney M. Ehrman:

Sidney M. Ehrman, Esq.,

Allan P. Matthew, Esq.,

John O. Moran, Esq.

For The Western Pacific Railroad Company:

F. C. Nicodemus, Jr., Esq., of Pierce & Greer,
40 Wall Street, New York.C. W. Dooling, Esq., Mills Building,
San Francisco.

For Crocker First National Bank of San Francisco and Samuel Armstrong, Trustees of First Mortgage:

Donald M. Gregory, Esq., of Messrs. Chickering & Gregory; Milbank, Tweed, Hope & Webb, by

Orville Wood, Esq., 15 Broad Street, New York.

For Institutional First Mortgage Bondholders Committee:

Herbert Clark, Esq., of Morrison, Hohfeld, Foerster, Shuman & Clark, and

Cravath deGersdorff, Swaine & Wood, by

Littleton Groom, Esq., and

Robert T. Swaine, Esq.,

15 Broad Street, New York.

For Irving Trust Company, Trustee; General and
Refunding Mortgage:

Felix T. Smith, Esq., of Pillsbury, Madison &
Sutro, and

Davies, Auerbach, Cornell & Hardy,

By H. C. McCollum, Esq.,

1 Wall Street, New York. [1146]

For A. C. James Co.:

Garret W. McEnerney, Esq., and

Andrew F. Burke, Esq., and

Whitman, Ransom, Coulson & Goetz,

by Horace E. Whiteside, Esq., and

Robert E. Coulson, Esq.,

40 Wall Street, New York.

For The Western Pacific Railroad Corporation:

M. C. Sloss, Esq., and E. D. Turner, Jr.,

of Sloss, Turner & Finney.

For Reconstruction Finance Corporation:

James S. Moore, Jr., Esq.,

of Messrs. Brobeck, Phleger & Harrison,

San Francisco, and

Cassius M. Clay, Esq., of Washington, D. C.

For Railroad Credit Corporation:

Edward G. Buckland, Esq.

For The Western Realty Company:

Leroy R. Goodrich, Esq., Oakland, California.

The Court: Gentlemen, I am going to request the Court to call the roll of attorneys this morning, so that the record may show who is here.

The Clerk: Who is appearing for the Trustees?

The Court: The Trustees: Who is appearing for Mr. Schumacher and Mr. Ehrman? Allan P. Matthew and John O. Moran?

Mr. Matthew: Yes, Your Honor.

The Clerk: Is Mr. Ehrman here?

Mr. Matthew: He is.

The Clerk: Western Pacific Railroad Company?

Mr. Nicodemus: F. C. Nicodemus, Jr. and C. W. Dooling.

The Clerk: Crocker First National Bank of San Francisco?

Mr. Wood: Orville W. Wood and Donald M. Gregory.

The Clerk: Institutional First Mortgage Bondholders Committee?

Mr. Swaine: Herbert W. Clark, Littleton Groom and Robert T. Swaine. [1147]

The Clerk: Irving Trust Company?

Mr. Smith: Felix T. Smith and H. C. McCollum.

The Clerk: A. C. James Company?

Mr. Coulson: Robert E. Coulson, Horace E. Whiteside, and Andrew F. Burke.

The Clerk: Western Pacific Railroad Corporation?

Mr. Sloss: M. C. Sloss and E. D. Turner, Jr.

The Clerk: Reconstruction Finance Corporation?

Mr. Clay: C. M. Clay, and James S. Moore.

The Clerk: Railroad Credit Corporation?

Mr. Buckland: Edward G. Buckland.

The Clerk: Western Realty Company?

Mr. Goodrich: Leroy R. Goodrich.

The Clerk: That is all, your Honor.

The Court: You may proceed, gentlemen.

Mr. Nicodemus: Mr. Elsey, please?

CHARLES ELSEY,

Called by the Debtor; Sworn.

The Clerk: State your name to the Court, please.

The Witness: Charles Elsey.

Mr. Nicodemus: Q. Mr. Elsey, are you President of the Western Pacific Railroad Company?

A. Yes, sir.

Q. And you have testified in these proceedings when the case was pending in the Interstate Commerce Commission?

A. Yes, sir.

Q. How long have you been connected with the Western Pacific Railroad Company?

A. Since 1907.

Q. 1907. At the Pre-trial Conference in December, Mr. Elsey, a stipulation of facts was signed by counsel representing all of the parties to the proceeding. Did you, before that stipulation was signed, arrange to have it checked for accuracy by the organization of the Western Pacific Railroad Company?

A. Yes, sir.

Q. Will you state what the checking process was?

(Testimony of Charles Elsey.)

A. We were provided with a draft of the stipulation, which we checked. It was then put in final form and filed, with the understanding that it would be checked at a later date.

Q. That is, you checked the preliminary draft of the stipulation? A. Yes, sir.

Q. Then, after the stipulation was signed and filed, you re-checked it? A. Yes, sir.

Q. What was the result of the re-check?

A. The re-check—a few minor corrections were found, and we have a memorandum to present here of the corrections.

Q. I understand that the stipulation was turned over to the various departments and the figures used in the stipulation were checked against your corporate records, is that correct? A. Yes, sir.

Q. And your organization were instructed to check the entire stipulation for accuracy?

A. Yes, sir.

Q. Now, you say you have a memorandum of certain corrections that were made after the original stipulation was filed? A. Yes, sir.

Q. Are you now prepared to adopt the stipulation of fact as part of your evidence to be certified back to the Interstate Commerce Commission?

A. Yes, sir.

Q. Subject to the corrections set forth in the memorandum that you just mentioned?

A. That is correct.

(Testimony of Charles Elsey.)

Mr. Nicodemus: If the Court please, we would like to offer the stipulation in evidence as part of Mr. Elsey's testimony, and also the memorandum of corrections which he now submits to the Court.

The Court: Is there any objection? So ordered. That will be Petitioner's Exhibit 1.

(The documents referred to were marked "Petitioner's Exhibit [1149] 1.")

Mr. Nicodemus: Q. Did you, at our request, Mr. Elsey, have photostatic copies made of the tabulated statement showing the existing capitalization of the Debtor company as of January 1, 1939, and the revised capitalizations proposed by the Interstate Commerce Commission in its plan, and the revised capitalizations proposed by certain of the parties to this proceeding?

A. Yes, I had that statement checked.

Q. You had that checked by the same process?

A. Yes, sir.

Q. Have you a photostatic copy of that available?

A. Yes, sir.

Mr. Nicodemus: I should like to offer the tabulated statement referred to by the witness. We have copies available for disposition to counsel. I may say, that was done originally by a process that cannot be used in evidence, because it is not durable, so we had it photostated.

The Clerk: Petitioner's Exhibit No. 2.

The Court: Petitioner's Exhibit No. 2?

(Testimony of Charles Elsey.)

The Clerk: Yes, your Honor.

The Court: Have you got an extra one?

Mr. Nicodemus: Yes, indeed, I have an extra one for the Court.

(The document referred to was marked "Petitioner's Exhibit 2.")

Mr. Nicodemus: I will have occasion, your Honor, to refer to this very frequently, and I think maybe this larger copy will be more useful to the Court.

Q. Mr. Elsey, at the time of the oral argument before the Interstate Commerce Commission in January, Commissioner Meyer inquired about the paired track operation in Nevada; that is the joint operation of the Southern Pacific and Western Pacific over the paired track. There was nothing in the record at that time on that subject, and I therefore would like to supplement the record by inquiring what the character of that operation is. Will you [1150] make a brief statement?

A. The tracks of the Southern Pacific and Western Pacific in Nevada are paired for a distance of approximately 178 miles. The Southern Pacific and Western Pacific use the Western Pacific tracks for all eastbound traffic, and the Southern Pacific and Western Pacific use the Southern Pacific tracks for all westbound business.

Q. How are the expenses of operation divided?

A. The expenses of operation are divided on a car-mile basis.

Q. Will you explain precisely what you mean by "car-mile basis"?

(Testimony of Charles Elsey.)

A. The expenses are divided as to number of cars of the two companies operating over the paired track.

Q. Can you give us approximately how the costs have been divided over a reasonable period of time as between the two companies?

A. As a general proposition, about 75-25.

Q. Can you break that up by years?

A. Yes, sir.

Q. Between 1924 and 1939? A. Yes, sir.

Q. Will you read that rapidly into the record?

A. Would you like all of the years?

Q. Yes.

A. The year 1924, Southern Pacific 77.17; Western Pacific 22.83. 1925, Southern Pacific 77.40; Western Pacific 22.60. 1926, Southern Pacific 77; Western Pacific 23. 1927, Southern Pacific 77.03; Western Pacific 22.97. 1928, Southern Pacific 77.48; Western Pacific 22.52. 1929, Southern Pacific 75.92; Western Pacific 24.08. 1930, Southern Pacific 73.20; Western Pacific 26.80. 1931, Southern Pacific 72.61; Western Pacific 27.39. 1933, Southern Pacific 72.29; Western Pacific 27.71. 1934, Southern Pacific 72.78; Western Pacific 27.22. 1935, Southern Pacific 71.43; Western Pacific 28.57. 1936, Southern Pacific 72.39; Western Pacific 27.61. 1937, Southern Pacific 72.46; Western Pacific 27.54. [1151] 1938, Southern Pacific 72.69; Western Pacific 27.31. 1939, Southern Pacific 72.78; Western Pacific 27.22.

Mr. Nicodemus: Q. Now, Mr. Elsey, from the figures, as I understand them, the Southern Pa-

(Testimony of Charles Elsey.)

cific started out with approximately 77 per cent. of the business against 22 per cent. for the Western Pacific, and over that 15-year period, the percentage of the Southern Pacific has progressively decreased, and the percentage of the Western Pacific has progressively increased, is that correct?

A. Yes, sir.

Q. But even to-day, the Southern Pacific is moving approximately three cars to one car of the Western Pacific?

A. Yes, sir.

Q. Mr. Elsey, the Commission's plan that is under consideration here to-day provides for mandatory capital fund of \$500,000. Do you think it necessary, year in and year out, to spend \$500,000 on capital account?

A. Yes, sir.

Q. You do?

A. What is that?

Q. You do?

A. Yes, sir.

Q. That is based on your past experience?

A. Yes, sir.

Q. What is the present condition of the Western Pacific with reference to its ability to efficiently handle the traffic tendered to it, or to handle a substantially increased traffic?

A. The physical condition of the property is better than it has ever been in its history.

Q. Better than it has ever been in its history?

A. Yes, sir.

Mr. Nicodemus: That is all I require from Mr. Elsey.

(Testimony of Charles Elsey.)

Mr. Swaine: May I ask a question on cross-examination?

Mr. Nicodemus: You certainly may.

Cross Examination

Mr. Swaine: Q. Mr. Elsey, paragraph 157 of the Stipulation says: "Annexed hereto as Exhibit L is a schedule showing ratios of annual gross revenues of Debtor and its subsidiaries for the [1152] years 1923 to 1938, inclusive, and annual gross revenues of Class 1 carriers of the United States for the same years, with their respective average gross revenues for the years 1923 to 1937, inclusive and"—and this is the language I particularly want to call your attention to—"and showing the effect of the construction of the Northern California extension, as prepared by officers of the Debtor's Trustees;" and so forth.

That exhibit, your remember, do you? You remember the exhibit that is referred—this is Exhibit

L. A. Yes, sir.

Q. That was prepared under your supervision?

A. That is correct.

Q. Now, that does not attempt separately to state gross revenues arising from the Northern California extension, does it?

A. It shows the revenues separately.

Q. Shows what?

A. It shows the revenues separately.

Q. It shows gross receipts?

(Testimony of Charles Elsey.)

A. Yes, sir.

Q. What are those receipts that are there shown? How did you arrive at that figure?

A. The auditor prepared the figures.

Q. Yes, but you say "add for Northern California extension." How did you arrive at the figure which you there added for Northern California extension?

A. The auditor simply took all of the waybills showing the cars that went over the Northern California extension and computed the revenues on those particular cars.

Q. Did you take the entire revenue on a car that was on the Northern California extension, or did you pro-rate it in some way?

A. As I understand it, he took the entire revenues; not only the revenues that were added on that particular car while it was on the Northern California extension, but also the main line of the system.

Q. That is what I wanted to get at. So that if the car went 20 miles on the Northern California extension, and had gone all the way from Salt Lake City down to the junction point, the entire [1153] revenue from that car, on these figures, is under that "add for Northern California extension"?

A. That is correct.

Q. I just wanted to make that clear, because I was afraid there was a little misdescription. Now, the stipulation, in the next succeeding paragraph,

(Testimony of Charles Elsey.)

says: "A schedule is being prepared showing ratios of annual net operating income of Debtor and its subsidiaries for the years 1923 to 1938, inclusive, and the annual net railway operating income of Class 1 carriers of the United States for the same period, with their respective average net railway operating income for the years 1923 to 1937, inclusive." You have previously had some language pointed out to you referring to showing the effect, of construction of the Northern California extension, as prepared by officers, and now have you prepared a study of the annual net railway operating income of the Debtor and its subsidiaries for the year 1923 to 1938, inclusive, and also a statement of the annual net railway operating income of the Class 1 carriers of the United States for the same years, with their respective average net railway operating income for the years 1923 to 1937, inclusive? . . . A. Yes, sir.

Q. Not giving any effect to Northern California extension? . . . A. That is true.

Q. Is it true that the reason you could not liberally do so, as stated in the stipulation, is that there is no way of separately determining what the net railway operating income of the Northern California extension is without going into very elaborate accounting? . . . A. That is correct.

Q. I show you a document marked Exhibit M, and ask you whether that is a correct statement of the annual net railway operating income of the Debtor and its subsidiaries for the years 1923 to

(Testimony of Charles Elsey.)

1938, inclusive, and also a correct statement of the annual net railway operating income of Class 1 carriers of the United States [1154] for the same years, with their respective average net railway operating income for the years 1923 to 1937, inclusive? A. Yes, sir.

Q. And does that exhibit also state the percentages of the later period and earlier period in each case, that is, in the case of Western Pacific and in the case of all Class 1 carriers?

A. That is correct.

Mr. Nicodemus: I would like to offer this study in lieu of the study that was contemplated by the stipulation, that exact study having become impossible because of the accounting difficulty that Mr. Elsey has testified to.

Mr. Coulson: May I ask a question on the schedule?

Mr. Nicodemus: Yes.

Mr. Coulson: Q. Mr. Elsey, in this document marked Exhibit M, that you have been looking at, this comparison—it is characterized as a comparison of net railway operating income. Is the net operating income, as shown for Class 1 carriers, generally on a comparable basis with the net railway operating income of Western Pacific System?

A. We have been figuring on that, Mr. Coulson, for the last three or four days, but we have not as yet completed that study.

(Testimony of Charles Elsey.)

Q. You testified, as to Exhibit L, which covers "Gross Revenues of the Western Pacific in comparison with the Gross Revenues of Class 1 Carriers." Now, those were, I take it, on a comparable basis, from the testimony you gave here?

A. Yes, sir.

Q. What different factor goes into this Exhibit M, so-called, which Mr. Swaine has tendered, that does not exist as to the others which have been the subject of your present study?

A. Well, there is a matter of hire of equipment, and also of joint facility rents. There is a question there as to whether they are on a comparable basis; as I said before, we have not completed [1155] that study yet.

Q. Can you explain to the Court just how this item of joint facility rents and equipment rents affects the comparability of the figures?

A. So far as joint facility rents and so far as the matter of Class 1 railroads are concerned, they are payable to one another, and what we are figuring on is as to whether those that wash themselves out, so far as the Class 1 railroads of the United States are concerned, where, so far as the Western Pacific figures are concerned, they are included in that figure that arrives at net railroad operating income. And the same way for per diem. The per diem paid between various Class 1 carriers would have a tendency to wash itself out, while they are still shown in the figures of the Western Pacific,

(Testimony of Charles Elsey.)

but, as I said before, we have not completed our study on it, and as to just whether or not that is a correct statement on it, I am not prepared to state at this time.

Q. Then you are not prepared to state with any definiteness to the Court that the Class 1 carrier figures are comparable to Western Pacific figures as to this net railway operating income item?

A. Yes, sir.

Mr. Swaine: Q. Now, just one second, you have stated to the Court, and you do state to the Court, that those figures are the net operating income as stated in the reports of the Class 1 carriers to the Interstate Commerce Commission? A. Yes.

Q. Your only question is whether there may not be some different equipment situations in the different roads than there are in your road, and some joint facility rentals, and one thing and another? In other words, the operating situation of those railroads, may be slightly different from yours. Nevertheless, the income is that stated to the Interstate Commerce Commission for all the Class 1 roads, isn't it? A. Yes, sir.

Mr. Coulson: Q. Mr. Elsey, as the problem which you are still [1156] studying one connected merely with differences in situation between the railroads, as Mr. Swaine has indicated, or the basic question of whether, in the consolidation of all the Class 1 railroads, these inter-company items of equipment rent and joint facility rents, have been eliminated? Which is the question?

(Testimony of Charles Elsey.)

A. The question is whether they are on a comparable basis.

Mr. Coulson: Your Honor, I object to the admission of this schedule at this time, and until we know whether the figures are comparable. We don't regard this comparison of net operating railway income as significant for any issue before the Court in the sense that the movement of gross traffic on this railroad, in COMPARISON to other railroads of the country, is significant, but we do object to this statement of any railway operating income going into the record until it is quite clear that the comparison is based on comparable figures. You could get a comparison of net revenues from railway operations which would leave out equipment rents and joint facility rents, and we would be glad to see that admitted without our objection, but we do object to this statement in its present form.

Mr. Swaine: Your Honor, if this is not to be admitted, then the schedule, Exhibit M, should come out—Exhibit L—I should say—was attached to the stipulation, at Mr. Coulson's request, as showing the ratio of Western Pacific's gross revenues, and gross revenues of Class 1 carriers, and there is the same possibility of discrepancy there. Oh, yes, you have got questions of equipment that may be among—

The Court (Interrupting): I suppose those discrepancies will be slight, and as you said, Colonel, not significant anyway.

(Testimony of Charles Elsey.)

Mr. Coulson: The whole exhibit, to us, looks significant.

The Court: Why take up time arguing about it? Let the objection be overruled. [1157]

Mr. Coulson: With Mr. Elsey's explanation on the record.

Mr. Swaine: You may call it the same exhibit.

The Court: Do I understand that you are now making a study of some kind, Mr. Elsey?

The Witness: Yes, we are making a study now.

Q. Do you propose to prepare another exhibit to be introduced in evidence?

A. Well, that remains to be seen, depending upon what the result of this study is, Judge.

Q. Well, if you can throw any further light upon the situation, please do it, will you.

A. Yes, sir.

Mr. Swaine: Q. Mr. Elsey, in paragraph 93 of the stipulation of facts, there is a provision—

The Court (interrupting): Just one minute; the Clerk seems in a quandry; he doesn't know what to call this exhibit M. Intervenor? Petitioner's? Who offered it?

Mr. Swaine: I take it we are all intervenors, here, aren't we, except the Debtor, so it would be Institutional Bondholders Committee Exhibit 1.

The Court: Now, is that true as to the other exhibit? I have them marked already, Petitioner's Exhibit 1 and Petitioner's Exhibit No. 2.

(Testimony of Charles Elsey.)

Mrs. Swaine: Those are Debtor's exhibits. I take it that everybody but the debtor is an intervenor here, and there are numerous intervenors, and it may be that there will be exhibits offered by other intervenors, so I suggest that this be the Institutional Bondholders Committee Exhibit No. 1. It is, I think, described as Exhibit M in the stipulation, with the modification which I brought out in the examination of Mr. Elsey.

The Court: We will call it Committee's Exhibit No. 1 and Committee's Exhibit No. 2.

The Clerk: Yes, your Honor. [1158]

(The documents referred to were marked Committee's Exhibits Nos. 1 and 2.)

Mr. Wood: Q. Mr. Elsey, paragraph 93 of the

Mr. Swaine: Those are Debtor's exhibits. I take stipulation recites that a schedule is being prepared relating to equipment, and that when that schedule has been identified by the signature of counsel for the Debtor's Trustees, for the first mortgage trustees, and for the refunding mortgage trustee, it may be filed with the Court, and when so filed, shall constitute part of this stipulation, as Exhibit G. I have in my hand a document which purports to be Exhibit G to the stipulation, which has been signed by Mr. Matthew, for the Debtor's Trustees, and by counsel for the respective Mortgage Trustees; was that document prepared in your office under your supervision?

A. Yes, sir, prepared in the accounting department of our office.

(Testimony of Charles Elsey.)

Q. Are you prepared to state that the facts and data contained in that document are correct, according to the records of Western Pacific?

A. Yes, sir.

Mr. Wood: I should like to offer this as Exhibit G to the stipulation, your Honor.

The Court: Exhibit G to the stipulation?

Mr. Wood: I may say that other copies of this are available and will be distributed later.

The Court: Who is offering this?

Mr. Wood: This is First Mortgage Trustees' your Honor; it is a part of the stipulation.

The Court: Very well.

(The document was marked "Exhibit G of the First Mortgage Trustees to the Stipulation.")

Mr. Wood: In paragraph 127 of the stipulation, it is recited that a schedule is being prepared relating to certain items in the Debtor's miscellaneous physical property account, and that [1159] when that schedule has been identified in a similar manner, it may be filed with the Court, and, when so filed, shall constitute a part of the stipulation as Exhibit H.

Q. I show you a document marked Exhibit H, with schedules and maps annexed, which has been signed by Mr. Matthew, and by counsel for the mortgage trustees; was that prepared in your office under your supervision?

A. It was prepared in the office of our Chief Engineer.

(Testimony of Charles Elsey.)

Q. Are you prepared to say that the data and facts contained in that document are correct according to the records?

A. I have been advised of that by our chief engineer, yes, sir.

Q. So far as you, personally, know, everything in there is correct? A. Yes, sir.

Mr. Wood: I offer this as Exhibit H to the stipulation, First Mortgage Trustees'.

The Clerk: First Mortgage Trustees' Exhibit H to the stipulation.

(The document was marked "First Mortgage Trustees' Exhibit H to the stipulation.")

Mr. Wood: Q. Mr. Elsey, I would like to ask you a question regarding two parcels which are shown on Map B annexed to Exhibit H. To refresh your recollection, I will show you the map. They are marked "Parcel 253-A and Parcel 261-A," in the area between Illinois street on the east, Iowa street on the west, Army street on the north, and Tulare on the south. You are familiar with the circumstances under which those parcels were required, and the purpose for which they were acquired?

A. Yes, sir.

Q. Schedule B, sheet 1 of the exhibit, and Schedule D, sheet 2 of the exhibit, shows that these parcels were purchased in 1932, one from M. L. and J. A. Bergero, and the other from Robert and Gertrude Ellis, and that they were not financed with deposits of [1160] cash under the First Mortgage. Mr. Elsey,

(Testimony of Charles Elsey.)

at the time these parcels were acquired in 1932, for what purpose was the land owned by the railroad company in that adjacent area being held by the railroad company? A. That is, in 1932?

Q. In 1932. For what purpose were they held, the lands in that immediate area?

A. Held for industrial purposes.

Q. Had your Engineering Department, about that time, prepared maps or drawings showing a projected lay-out for industrial tracks in that area?

A. We worked out several track lay-outs to serve that particular district.

Q. Now, at the time that you acquired these parcels in 1932, for what purpose were they intended to be used? A. For industrial purposes.

Q. You mean for the same purpose as the other land in the same vicinity, adjacent?

A. In that particular area, yes sir.

Mr. Wood: Thank you.

Mr. McCollum: At my request, have you prepared, or had prepared, certain exhibits, showing complete figures for the year 1939, eleven months actual, plus an estimate for December, showing various facts to which I will later refer?

A. You mean as to gross operating revenues of the Western Pacific System?

Q. That and various other items to which I will call your specific attention in a moment.

A. Yes, sir.

(Testimony of Charles Elsey.)

Q. And have those statements been prepared, and to the best of your knowledge are they correct?

A. Yes, sir.

Q. I show you a statement entitled "Combined Railway Operating Revenues," which has the heading at the top, "1-a", Exhibit 1 of the papers to which I have referred.

A. You refer to the statement headed "Combined Railway Operating Revenues"?

Q. Yes. A. Yes:

Mr. McCollum: May I have that marked as Irving Trust Company [1161] Exhibit 1-A?

The Clerk: 1-A.

(The document was marked "Irving Trust Company Exhibit 1-A.")

(Testimony of Charles Elsey.)

IRVING TRUST CO. EXHIBIT NO. 1-A.

The Western Pacific Railroad Company

INFORMATION REQUESTED BY PILLSBURY, MADISON
AND SUTRO, IN THEIR LETTER DATED DECEMBER 20, 1939 ADDRESSED TO MR. C. L. DROIT, SECRETARY.

1. (a).—Combined Railway Operating Revenues
The Western Pacific Railroad Company
— Sacramento Northern Railway
Tidewater Southern Railway Company
Deep Creek Railroad Company
(All Inter-Company Items Eliminated.)

Period January 1 to November 30, 1939 and estimate for the month of December, 1939.

Period	Freight	Passenger	Other	Total
Jan. 1 to				
Nov. 30, 1939	\$15,467,873	\$ 958,584	\$440,355	\$16,866,812
Dec. 1939 Est.	1,348,300	53,700	30,600	1,432,600
Total Year	\$16,816,173	\$1,012,284	\$470,955	\$18,299,412

[Endorsed]: United States District Court, No. 26519, Western Pac. R. R. Co., Irving Trust Co., Exhibit No. 1-A. Filed 4-22-1940. Walter B. Maling, Clerk.

Mr. Swaine: May we have copies of those? We haven't seen them.

Mr. McCollum: I will give them to you later. Do you want to see them before they go in?

Mr. Swaine: Yes, I would like to see whether I have any objection to their going in.

(Testimony of Charles Elsey.)

The Court: What did you mark them?

The Clerk: He asked to have it marked Irving Trust Company's Exhibit 1-A.

The Court: 1-A? Is that to be a part of the stipulation of facts?

Mr. McCollum: No, sir, this is a court exhibit.

The Court: I was wondering why you asked to have it marked 1-A.

Mr. McCollum: Really, because it is a part of various answers to the question on my memorandum, which is called "1", and it also has a heading "1-A".

The Court: Very well.

Mr. McCollum: Q. Have you also a copy of a statement listed as "1-B", entitled "Combined Income Available for Interest Charges"?

A. Yes, sir.

Mr. McCollum: I should like to have that introduced as Irving Trust Company's Exhibit 1-B.

Mr. Swaine: May I ask, Mr. McCollum, what you are doing? Merely taking the ten months attached to the stipulation and carrying it through 1939 by adding November actual and an estimate for December?

Mr. McCollum: Yes.

Mr. Swaine: I have no objection to that. [1162]

(The document was marked "Irving Trust Company's Exhibit 1-B.")

(Testimony of Charles Elsey.)

IRVING TRUST CO. EXHIBIT NO. 1-B

The Western Pacific Railroad Company

INFORMATION REQUESTED BY PILLSBURY, MADI-
SON AND SUTRO IN THEIR LETTER DATED DE-
CEMBER 20, 1939 ADDRESSED TO MR. C. L. DROIT,
SECRETARY.

1. (b)—Combined Income Available for Interest Charges

The Western Pacific Railroad Company

Sacramento Northern Railway

Tidewater Southern Railway Company

Deep Creek Railroad Company

(All Inter-Company Items Eliminated)

Period January 1 to November 30, 1939 and estimate for the
month of December, 1939.

January 1 to November 30, 1939	\$1,354,828
--------------------------------	-------------

December 1939—Estimated	49,631
-------------------------	--------

Total Year	\$1,404,459
------------	-------------

[Endorsed]: United States District Court, No.
26591. In re Western Pac. R. R. Co. Irving Trust
Co. Exhibit No. 1-B. Filed 1/22/1940. Walter B.
Maling, Clerk. By [illegible], Deputy Clerk.

Mr. McCollum: Q. The next statement is
marked "1-C," "Combined Income Available for
Interest Charges," and so forth. A. Yes sir.

Q. Is that one of the statements to which you
have referred? A. Yes.

Mr. McCollum: I would like to have that intro-
duced as Irving Trust Company's Exhibit 1-C.

(The document was marked "Irving Trust Com-
pany's Exhibit 1-C.")

(Testimony of Charles Elsey.)

IRVING TRUST CO. EXHIBIT NO. 1-C

The Western Pacific Railroad Company
 INFORMATION REQUESTED BY PILLSBURY, MADISON AND SUTRO IN THEIR LETTER DATED DECEMBER 20, 1939 ADDRESSED TO MR. C. L. DROIT, SECRETARY.

- 1. (c)—Combined Income Available for Interest Charges Adjusted to Exclude Charge to Income for Amortization of Discount on First Mortgage Bonds of The Western Pacific Railroad Company.

The Western Pacific Railroad Company
 Sacramento Northern Railway
 Tidewater Southern Railway Company
 Deep Creek Railroad Company
 (All Inter-Company Items Eliminated)

Period January 1 to November 30, 1939 and estimate for the month of December 1939.

January 1 to November 30, 1939	\$1,478,946
December 1939—Estimated	60,914
Total Year	\$1,539,860

[Endorsed]: United States District Court, No. 26591. Western Pac. R. R. Co. Irving Trust Co. Exhibit No. 1-C. Filed 1/22/1940. Walter B. Maling, Clerk.

Mr. McCollum: Q. Likewise, there is a statement marked 1-D, "Gross Revenues Accruing to Western Pacific Railroad Company from freight originated and terminated on and passing over the Northern California Extension." Is that one of the statements to which you refer? A. Yes, sir.

(Testimony of Charles Elsey.)

Mr. McCollum: May I have that marked as Irving Trust Company Exhibit 1-D?

(The document was marked "Irving Trust Company's Exhibit 1-D.")

IRVING TRUST CO. EXHIBIT NO. 1-D

The Western Pacific Railroad Company
 INFORMATION REQUESTED BY PILLSBURY, MADISON AND SUTRO IN THEIR LETTER DATED DECEMBER 20, 1939 ADDRESSED TO MR. C. L. DROIT, SECRETARY.

1. (d)—Gross Revenues Accruing to The Western Pacific Railroad Company from Freight Originated and Terminated On and Passing Over the Northern California Extension:

Period January 1 to November 30, 1939	\$3,194,007
Month of December 1939—Estimated	284,563

Total Year	\$3,478,570
------------	-------------

[Endorsed]: United States District Court, No. 26591. Western Pac. R. R. Co. Irving Trust Co. Exhibit No. 1-D. Filed 1/22/1940. Walter B. Maling, Clerk.

Mr. McCollum: Q. The next statement is marked "1-E," "Income Available for Interest Charges, Tidewater Southern Railroad Company." Is that one of the statements to which you have referred?

A. Yes, sir.

(Testimony of Charles Elsey.)

Mr. McCollum: I would like to have that marked as Irving Trust Company Exhibit 1-E.

(The document was marked "Irving Trust Company's Exhibit 1-E.")

IRVING TRUST CO. EXHIBIT NO. 1-E

The Western Pacific Railroad Company
INFORMATION REQUESTED BY PILLSBURY, MADISON AND SUTRO IN THEIR LETTER DATED DECEMBER 20, 1939 ADDRESSED TO MR. C. L. DROIT, SECRETARY.

1. (c)—Income Available for Interest Charges

Tidewater Southern Railway Company

Period January 1 to November 30, 1939 and estimate for the month of December, 1939.

January 1 to November 30, 1939	\$152,832
--------------------------------	-----------

December 1939—Estimated	Deficit — 5,800
-------------------------	-----------------

Total Year	\$147,032
------------	-----------

[Endorsed]: United States District Court, No. 26591. Western Pac. R. R. Co. Irving Trust Co. Exhibit No. 1-E. Filed 1/22/1940. Walter B. Maling, Clerk. By [Illegible], Deputy Clerk.

Mr. McCollum: Q. Next is a statement marked "1-F," "Western Pacific Railroad Company; Proportion of Revenues from Traffic Interchange with Tidewater Southern Railroad Company." Is that one of the statements to which you have referred?

A. Yes, sir.

(Testimony of Charles Elsey.)

Mr. McCollum: May I ask that that be marked as Irving Trust Company's Exhibit 1-F?

(The document was marked "Irving Trust Company's Exhibit 1-F.") [1163]

IRVING TRUST CO. EXHIBIT NO. 1-F

The Western Pacific Railroad Company

INFORMATION REQUESTED BY PILLSBURY, MADISON AND SUTRO IN THEIR LETTER DATED DECEMBER 20, 1939 ADDRESSED TO MR. C. L. DROIT, SECRETARY.

1. (f)—The Western Pacific Railroad Company Proportion of Revenues from Traffic Interchanged with Tidewater Southern Railway Company.

Period January 1 to November 30, 1939.....\$572,590

Month of December 1939—Estimated.....14,618.

Total Year.....\$587,208

[Endorsed]; United States District Court, No. 26591, Western Pac. R. R. Co. Irving Trust Co. Exhibit No. 1-F, Filed 1/22/1940, Walter B. Mallin, Clerk.

Mr. McCollum: Q. The next statement is marked "1-G", "Railway Operating Income, Central California Traction Company." Is that one of the statements to which you have referred?

A. Yes, sir.

Mr. McCollum: May I have that marked Irving Trust Company's Exhibit 1-G?

(The document was marked "Irving Trust Company's Exhibit 1-G.")

(Testimony of Charles Elsey.)

IRVING TRUST CO. EXHIBIT NO. 1-G.

The Western Pacific Railroad Company

INFORMATION REQUESTED BY PILLSBURY, MADI-
SON AND SUTRO IN THEIR LETTER DATED DE-
CEMBER 20, 1939 ADDRESSED TO MR. C. L. DROIT,
SECRETARY.

1. (g)—Railway Operating Income

Central California Traction Company

Period January 1 to November 30, 1939 and estimate for the
month of December, 1939.

January 1 to November 30, 1939	\$34,837
December 1939—estimated	Deficit —4,385
Total Year	\$30,452

[Endorsed]: United States District Court, No.
26591, Western Pac. R. R. Co. Irving Trust Co.
Exhibit No. 1-G. Filed 1/22/1940. Walter B. Ma-
ling, Clerk.

Mr. McCollum: Q. The next is 1-H, "Income
and Profit and Loss Deficit of Central California
Traction Company," and so forth. Is that one of
the statements to which you have referred?

A. Yes, sir.

Mr. McCollum: I should like to have that marked
Irving Trust Company's Exhibit 1-H.

(The document was marked "Irving Trust Com-
pany's Exhibit 1-H.")

(Testimony of Charles Elsey.)

IRVING TRUST CO. EXHIBIT NO. 1-H

The Western Pacific Railroad Company

INFORMATION REQUESTED BY PILLSBURY, MADISON AND SUTRO IN THEIR LETTER DATED DECEMBER 20, 1939 ADDRESSED TO MR. C. L. DROIT, SECRETARY.

1. (h)—Income and Profit and Loss Deficit of Central California Traction Company to be absorbed by Southern Pacific Company, The Atchison, Topeka and Santa Fe Railway Company and The Western Pacific Railroad Company

Period January 1 to November 30, 1939 and estimate for the month of December 1939.

January 1 to November 30, 1939	\$12,425
December 1939—Estimated	6,285
Total Year	\$18,710

The Western Pacific Railroad Company's Proportion 6,237

Advances Made to Central California Traction Company by Southern Pacific Company, The Atchison, Topeka and Santa Fe Railway Company and The Western Pacific Railroad Company

Period January 1 to December 31, 1939 \$56,250

The Western Pacific Railroad Company's Proportion 18,750

[Endorsed]: United States District Court, No. 26591. Western Pac. R. R. Co. Irving Trust Co. Exhibit No. 1-H. Filed 1/22/1940. Walter B. Maling, Clerk.

Mr. McCollum: Q. The next is marked 1-I, "Western Pacific Railroad Company, Proportion

(Testimony of Charles Elsey.)

of Revenues from Traffic Interchange with Central California Traction Company." Is that one of the statements to which you have referred?

A. Yes, sir.

Mr. McCollum: I should like to have that marked Irving Trust Company's Exhibit 1-I.

(The document was marked "Irving Trust Company's Exhibit 1-I.")

IRVING TRUST CO. EXHIBIT NO. 1-I

The Western Pacific Railroad Company

INFORMATION REQUESTED BY PILLSBURY, MADISON AND SUTRO IN THEIR LETTER DATED DECEMBER 20, 1939 ADDRESSED TO MR. C. E. DROIT, SECRETARY.

1. (i)—The Western Pacific Railroad Company Proportion of Revenues from Traffic Interchanged with Central California Traction Company

Period January 1 to November 30, 1939.....	\$263,014
--	-----------

Month of December 1939—Estimated.....	5,470
---------------------------------------	-------

Total Year.....	\$268,484
-----------------	-----------

[Endorsed]: United States District Court, No. 26591. Western Pac. R. R. Co. Irving Trust Co. Exhibit No. 1-I. Filed 1/22/1940. Walter B. Maling, Clerk.

Mr. McCollum: Q. The next is marked 1-J, "Railway Operating Income, Alameda Belt Line." Is that one of the statements to which you have referred?

A. Yes, sir.

Mr. McCollum: I should like to have that marked Irving Trust Company's Exhibit 1-J.

(Testimony of Charles Elsey.)

(The document was marked "Irving Trust Company's Exhibit 1-J.")

Mr. McCollum: Q. Next is marked 1-K, "Income and Profit and Loss Deficit of Alameda Belt Line," and so forth. Is that one of the statements to which you have referred? A. Yes, sir.

Mr. McCollum: I should like to have that marked Irving Trust Company's Exhibit 1-K. [1164]

(The document was marked "Irving Trust Company's Exhibit 1-K.")

Mr. McCollum: Q. The next is marked "1-L," "Income of Standard Realty & Development Company." Is that one of the statements to which you have referred? A. Yes, sir.

Mr. McCollum: I should like to have that marked Irving Trust Company Exhibit 1-L.

(The document was marked "Irving Trust Company's Exhibit 1-L.")

Q. What was the average revenue car received by the Debtor on traffic delivered to or received from Alameda Belt Line in 1935, '36, '37 and '38, listed in paragraph 151 of the stipulation, if you know?

A. I only have the averages of 1935 and 1938.

Q. And what were those?

A. The revenue in 1935 was approximately \$62 a car, and in 1938, \$74 a car.

Q. Those are averages? A. Yes.

Q. What would this indicate as the approximate total revenues of the Debtor from traffic delivered

(Testimony of Charles Elsey.)

to or received from the Belt Line in the years 1935 and 1938?

A. \$315,365 in 1935, and \$331,240 in 1938.

Q. Will you please describe the nature of the operations of the Alameda Belt Line and its usefulness to the Debtor?

A. The Alameda Belt Line is a switching line which furnishes the sole access for Western Pacific to the industrial district of Alameda. The Debtor acquired participation at the request of the City of Alameda in 1926, and numerous industries have since located in the Alameda Industrial section on the faith of having services through the Alameda Belt Line over the Western Pacific and Santa Fe, as well as over the Southern Pacific, which had previously been the only line having direct connection with any part of the District. In addition to the traffic which the Western Pacific derives directly from the Alameda Belt Line, it had acquired considerable good will, which is valuable to the entire system in obtaining traffic. [1165]

Q. Have you had prepared in your office a statement showing the Interstate Commerce valuation of the Alameda Belt Line property as of December 31, 1935, and also as of December 31, 1938, and also the balance sheets of the Alameda Belt Line as of said dates?

A. Yes, sir.

Q. And is that statement, to the best of your belief, correct?

A. Yes, sir.

(Testimony of Charles Elsey.)

Mr. McCollum: I offer in evidence that statement as Irving Trust Company's Exhibit 2.

(The document was marked "Irving Trust Company's Exhibit 2.")

IRVING TRUST CO. EXHIBIT No. 2

Alameda Belt Line

STATEMENT OF VALUATION

AS OF DECEMBER 31, 1935 AND DECEMBER 31, 1938

	As of Dec. 31, 1935	As of Dec. 31, 1938
Interstate Commerce Commission's final value, for rate making purposes, as of December 31, 1928, of property owned and used for Common Carrier purposes and property owned but not used, excluding working capital	\$720,500.00	\$720,500.00
Additions and Betterments subsequent to December 31, 1928	247,411.49	264,550.54
Total Interstate Commerce Commission valuation adjusted by subsequent Additions and Betterments	\$967,911.49	\$985,050.54
Non-operating physical property, not included in above investment, as shown by books	\$156,540.32	\$156,500.38

Copies of General Balance Sheets of Alameda Belt Line as of December 31, 1935 and December 31, 1938 follow.

[Endorsed]: United States District Court, No. 26591. Western Pac. R. R. Co. Irving Trust Co. Exhibit No. 2. Filed 1/22/1940. Walter B. Maling, Clerk. By [Illegible], Deputy Clerk.

(Testimony of Charles Elsey.)

Mr. McCollum: Q. As I understand it, there was no I.C.C. valuation as to those dates for Central California Traction Company, is that correct?

A. No, sir, there was not.

Q. But you have had prepared the balance sheets of the Central California Traction Company as of December 31, 1935, and December 31, 1938?

A. Yes, sir.

Q. Is that statement true and correct to the best of your knowledge?

A. Yes, sir.

Mr. McCollum: I offer the statement in evidence as Irving Trust Company Exhibit 3.

(The document was marked "Irving Trust Company Exhibit 3.")

Mr. McCollum: Q. Can you state in general what you consider to be the prospects for continued earnings of the Central California Traction Corporation?

A. The territory which the Central California Traction serves is a rich grape-growing and wine-producing territory, and I see no reason why the earnings since 1933 should not continue, although the results of any one particular year depend on the size and quality of the crop, and also the general market conditions.

Q. Is it your best judgment that the benefit derived by the Debtor from retaining its participation in the Alameda Belt Line and the [1166] Central California Traction Company is greater than any loss through having to make advances to those companies?

A. Yes, sir.

(Testimony of Charles Elsey.)

Q. How much of the traffic which originates or terminates on the Debtor's Northern California Extension is now traffic which it would not have except for the existence of the extension?

A. Practically all.

Q. Have you had prepared in your office an exhibit showing the amount of cash and receivables in the hands of the Debtor's Trustees on March 4, 1936?

A. Yes, sir.

Q. Is that statement true and correct, to the best of your belief?

A. Yes, sir.

Mr. McCollum: I offer that statement in evidence as Irving Trust Company's Exhibit 4.

(The document was marked "Irving Trust Company's Exhibit 4.")

IRVING TRUST CO. EXHIBIT No. 4

The Western Pacific Railroad Company

CASH AND ACCOUNTS RECEIVABLE AS OF
MARCH 4th, 1936

CASH

E. C. Bates, Treasurer	\$1,532,858.84
M. J. Curry, Assistant Treasurer	5,382.14
G. K. Daggett, Petty Cash	7,500.00
Remittances in Transit	93,839.53*
Total Cash	\$1,639,580.51

(Testimony of Charles Elsey.)

ACCOUNTS RECEIVABLE

Traffic and Car Service Balances Receivable.....	\$ 245,585.30
Agents and Conductors	138,245.55*
Dining Car Conductors, Hotel Managers.....	149.30
Individuals and Companies	409,620.52
Railway Express Agency, Inc.....	4,236.09
Foreign Roads Freight Claim Settlements	20,264.20
United States Government	114,313.59
Accrued Interest on Railway Express Agency, Inc. Advances	577.38
Total Accounts Receivable	\$ 932,991.93
Total Cash and Receivables.....	\$2,572,572.44

(*) Figures shown here are amounts as of March 1, 1936. Actual figures as of March 4th, 1936, for these two items not now available as records have been destroyed.

[Endorsed]: United States District Court, No. 26591, Western Pac. R. R. Co. Irving Trust Co. Exhibit No. 4. Filed 1/22/1940. Walter B. Maling, Clerk.

Mr. McCollum: Q. Have you had prepared in your office a statement of equipment acquired between August 1, 1935 and December 31, 1939, showing the number of units remaining in service, and their ledger value as of December 31, 1939, and the Western Pacific Railroad Company's equity as of December 31, 1939 in such of the equipment as was acquired under Equipment Trust Agreements and Conditional Sales Contracts? A. Yes, sir.

Q. Is that statement true and correct, to the best of your belief? A. Yes, sir.

(Testimony of Charles Elsey.)

Q. Now, this statement is designed, is it not, to show the equipment or equity in equipment which was acquired during the course of the reorganization proceedings, by the Debtor's Trustees, either with cash or under equipment trust or similar agreements entered into after the inception of the reorganization proceeding? A. Yes, sir.

Q. And that shows, generally speaking, does it not, that the ledger value of the units acquired other than under equipment [1167] trusts was \$432,842, approximately? A. Yes, sir.

Q. And that the ledger value of the equity acquired under equipment trusts and similar agreements was \$1,059,368? A. Yes, sir.

Mr. McCollum: I offer in evidence the statement which has been referred to, as Irving Trust Company Exhibit 5.

(The document was marked "Irving Trust Company's Exhibit 5.")

(Testimony of Charles Elsey.)

IRVING TRUST CO. EXHIBIT No. 5

The Western Pacific Railroad Company

STATEMENT OF EQUIPMENT ACQUIRED BETWEEN AUGUST 1, 1935 AND DECEMBER 31, 1939, SHOWING NUMBER OF UNITS REMAINING IN SERVICE AND THEIR LEDGER VALUE AS OF DECEMBER 31, 1939, AND THE WESTERN PACIFIC RAILROAD COMPANY'S EQUITY AS OF DECEMBER 31, 1939, IN SUCH OF THE EQUIPMENT AS WAS ACQUIRED UNDER EQUIPMENT TRUST AGREEMENTS AND CONDITIONAL SALES CONTRACTS.

The number of Units in Service December 31, 1939, a

Acquired by the Use of Free Funds between

August 1, 1935, and December 31, 1939, and the

Ledger Value of Such Units as of December 31, 1939.

	No. of Units as of December 31, 1939	Ledger Value as of December 31, 1939
Steam Locomotives	10	\$341,617.19
Freight Train Cars	24	48,295.78
Passenger Train Cars	None	
Floating Equipment	None	
Work Equipment	30	42,929.69
Total	64	\$432,842.66

(Testimony of Charles Elsey.)

The Number of Units in Service December 31, 1939,
 Acquired Under Equipment Trusts and Conditional Sales Contracts
 Between August 1, 1935, and December 31, 1939, Their
 Ledger Value and The Western Pacific Railroad Company's
 Equity Therein as of December 31, 1939

	No. of Units as of December 31, 1939	Ledger Value as of December 31, 1939
Steam Locomotives.....	14*	\$2,203,252.86
Freight Train Cars.....	350	869,964.98
Passenger Train Cars.....	3	116,654.98
Floating Equipment.....	None	
Work Equipment.....	1	72,367.93
Total.....	368	\$3,262,240.75
Outstanding Principal December 31, 1939.....		2,202,871.99
The Western Pacific Railroad Company's Equity as of December 31, 1939.....		\$1,059,368.76

The Number of Units in Service December 31, 1939
 Acquired with Proceeds of Sale of \$3,000,000
 Principal Amount of Trustees' Certificates dated April 1, 1936
 And the Ledger Value of Such Units as of December 31, 1939

	No. of Units as of December 31, 1939	Ledger Value as of December 31, 1939
Freight Train Cars.....	100	\$ 232,912.00

(*) Includes 3 Diesel switching locomotives

[Endorsed]: United States District Court, No.
 26591. Western Pac. R. R. Co., Irving Trust Co.
 Exhibit No. 5. Filed 1/22/1940. Walter B. Maling,
 Clerk.

(Testimony of Charles Elsey.)

The Court: We will take a brief recess at this time.

(After recess:)

Mr. McCollum: If the Court please, I have no further questions of Mr. Elsey.

I have just a few exhibits which I would like to introduce through Mr. Curry.

The Court: Does counsel wish to ask Mr. Elsey any question?

Mr. Wood: I should like to ask one question.

Q. On the Irving Trust Company Exhibit 5, Mr. Elsey—

A. Will you talk a little louder, please?

Q. On Irving Trust Company Exhibit 5, which has just been offered by Mr. McCollum, in the first heading the legend is "Number of Units in Service, December 31, 1939, acquired by the use of free funds between August 1, 1935 and December 1, 1939, and the ledger value of such units as of December 1, 1939."

Do the words "free funds" there refer to revenues of the railroad company during the trusteeship—revenues from operations?

A. My No. 5 is not the statement that you are speaking of.

Q. Perhaps I have it marked wrong. It is the statement of equipment acquired between August 1, 1935 and December 31, 1939, showing the number of units remaining in service and their ledger value as of December 31, 1939. Is that the one that you have in your hand?

(Testimony of Charles Elsey.)

A. The first portion of the statement has the amount of \$432,842.66?

Q. Yes.

A. Yes; that is the amount of equipment acquired by the use of free funds between August 1, 1935 and December 31, 1939. [1168]

Q. My question has to do with the meaning of the words "free funds." That represents the revenues from the operations of the railroad during the trusteeship?

A. Yes, sir.

Q. It does not represent the sale of any unmortgaged assets?

A. In a broad sense it means any funds other than derived from the sale of securities.

Q. It is the income of the trustees during the trusteeship?

A. Yes, sir.

Q. During that period was any interest paid on the first mortgage bonds?

A. No, sir.

The Court: Anything further of Mr. Elsey?

Mr. McCollum: If the Court please, if I could call Mr. Curry for a moment, I could put in a few remaining Irving Trust Company exhibits.

M. J. CURRY,

Called by the Irving Trust Company: Sworn.

The Clerk: Will you state your name to the Court, please?

A. M. J. Curry.

Direct Examination.

Mr. McCollum: If the Court please, there is in the Interstate Commerce Commission record one of the later listing statements for first mortgage bonds as of some date at the end of 1931, I think, and I would like to introduce through this witness certain earlier listing statements of the same character.

Q. Mr. Curry, have you with you copies of certain listing statements which you supplied from your file to my partner, Mr. Judd?

A. I have.

Q. And are those listing statements relating to first mortgage bonds and dated July 16, 1925—

A. Yes. [1169]

(Testimony of M. J. Curry.)

IRVING TRUST CO. EXHIBIT No. 6

Francis E. Fitch (Inc.) 138 Pearl St. New York.

A—6800

COMMITTEE ON STOCK LIST, NEW YORK
STOCK EXCHANGE

The Western Pacific Railroad Company:

(Organized under the laws of California)

First Mortgage Five Per Cent. Bonds, Series A.

Due March 1, 1946.

Additional Listing, Series A Bonds.....\$ 4,000,000

Authorized First Mortgage Bonds.....50,000,000

Amount issued:

Series A, 5% Bonds.....28,180,000

Series B, 6% Bonds.....3,000,000

Total Listing applied for:

Series A.....28,180,000

Series B.....3,000,000

This additional issue:

Indenture authorized by stockholders. July 13, 1946

Authorized by Board of Directors.....Dec. 15, 1924

Approved by Interstate Commerce Commission by

its order March 17, 1925, I.C.C. Docket No. 4681,

and by California Railroad Commission by its or-

der April 7, 1925, Application No. 14758. No other

authority necessary.

(Testimony of M. J. Curry.)

New York, July 13, 1925.

Referring to its previous applications, especially to A-4667, dated May 10, 1922, The Western Pacific Railroad Company (hereinafter called the "Railroad Company") hereby applies for the listing on the New York Stock Exchange of \$4,000,000 additional (of a total authorized issue of \$50,000,000) of its First Mortgage 5% Gold Bonds, Series A, due March 1, 1946, consisting of Nos. M23297 to M27296, both inclusive, for \$1,000 each (and such fully registered bonds as may be issued in exchange for coupon bonds), on official notice of distribution and sale to the public, making the total amount of Series A Bonds issued and applied for \$28,180,000. The bonds of Series A and Series B rank equally under the mortgage.

All of the bonds secured by the mortgage previously issued have been listed, pursuant to action on the following applications:

A-4747, dated Mar. 13, 1917 (\$20,000,000)

Series A,

A-5478, dated June 30, 1921 (\$1,180,000)

Series A,

A-5667, dated May 10, 1922 (\$3,000,000)

Series B.

Authority for Issue

The issuance of said \$4,000,000 Series A Bonds of the Railroad Company, covered by this application, was authorized by resolution of the Board of Direc-

(Testimony of M. J. Curry.)

tors of the Railroad Company adopted December 15, 1924, and their authentication was authorized by a further resolution adopted by the Board of Directors on June 1, 1925. No action by the stockholders of the Railroad Company is required by the provisions of the First Mortgage of the Railroad Company, dated June 26, 1916, hereinafter mentioned, or by any laws or regulations applicable to the issuance and sale of any bonds secured by said First Mortgage. The issuance and sale of said \$4,000,000 Series A Bonds at not less than ninety per cent. of their face amount and accrued interest and for the purposes hereinafter stated were approved by order of the California Railroad Commission dated April 7, 1925, on application No. 14,758, and by order of the Interstate Commerce Commission dated March 17, 1925, in Finance Docket No. 4681. No further authority is required.

Description

The First Mortgage Bonds are secured by the Railroad Company's First Mortgage, dated June 26, 1916, to First Federal Trust Company (of San Francisco, California), and Henry E. Cooper (37 Wall Street, New York City), Trustees. The bonds covered by this application are an additional issue of Series A Bonds of \$4,000,000 principal amount, all bearing interest at the rate of five per cent. per annum, dated June 26, 1916, and maturing March 1, 1946.

(Testimony of M. J. Curry.)

The principal of the bonds is payable at the office or agency of the Railroad Company in the Borough of Manhattan, City of New York, N. Y., and the interest thereon is payable at its said office or agency, or at the option of the holder at its office or agency in the City and County of San Francisco, semi-annually, on March 1st and September 1st. Both principal of and interest upon each bond are payable in gold coin of the United States of America of or equal to the standard of weight and fineness as it existed June 26, 1916, without deduction for any tax, assessment or other governmental charge (except the Federal Income Tax imposed by the Act of Congress approved October 3, 1913, with respect to income derived from interest paid thereon), which the Railroad Company or the Trustees under the mortgage securing the bonds, or either of them, may be required to pay thereon or to retain therefrom under any present or future law or ordinance of the United States of America, or of any State, territory, municipality, or other taxing authority therein; and the Railroad Company assumes the payment of all such taxes, assessments and charges with the exception aforesaid.

The bonds are in coupon form of the denominations of \$1,000, and \$500 and \$100 and are registerable as to principal only. Coupon bonds for \$1,000 are interchangeable with registered bonds of the denominations of \$1,000, \$5,000, and \$10,000, or multiples of \$10,000. Coupon bonds for \$1,000, \$500, and

(Testimony of M. J. Curry.)

\$100 are also interchangeable in equal principal amounts. For any such exchange and for any transfer of registered bonds or of coupon bonds registered as to principal, the Company, at its option, may require the payment of a sum sufficient to reimburse it for any stamp tax or other governmental charge and except in case of coupon bonds registered as to principal an additional amount not exceeding \$1 for each new bond issued upon such exchange or transfer.

Sinking Fund

The Mortgage securing the bonds provides for the creation of a sinking fund to be especially applied to the purchase or redemption of bonds, and requires the Railroad Company for that purpose to pay, out of any income lawfully applicable thereto, after payment of operating expenses of every description, taxes and interest upon the bonds, the sum of \$50,000 on January 1st of each year, commencing with the year 1919. Series A Bonds are redeemable through the Sinking Fund at par and accrued interest on at least sixty days' previous published notice, as described under redemption. All bonds purchased or redeemed by the Sinking Fund are to be cancelled and delivered to the Railroad Company. These provisions have been fully complied with.

(Testimony of M. J. Curry.)

Redemption

The Railroad Company may redeem all or any part of said Series A Bonds on any semi-annual interest payment date, at par and accrued interest, on notice published once in each calendar week for eight successive weeks in two newspapers of general circulation published in the Borough of Manhattan, New York, N. Y., and one newspaper of general circulation published in San Francisco, California, one such publication to be not less than sixty nor more than ninety days before the date of redemption. The Company may elect to redeem the bonds of one or more series.

All bonds redeemed are to be cancelled or indelibly stamped with a statement that they have been redeemed. In the case, however, of bonds hereafter refunded with, or exchanged for, or the payment, redemption or retirement otherwise whereof shall be provided for by means of, refunding bonds or other obligations of the Railroad Company issued under a mortgage or other instrument providing that bonds redeemed pursuant to the provisions of the First Mortgage, notwithstanding that they shall have been cancelled or marked "Cancelled," shall be deposited with the Trustees under such new mortgage or other instrument, as security for such refunding bonds or other obligations, the bonds so redeemed and deposited shall be deemed to remain alive and unextinguished in the hands of the Trust-

(Testimony of M. J. Curry.)

tees under such new mortgage or other instrument for the security of such refunding bonds or other obligations, to the extent specified in section 2 of Article Third of the Mortgage.

Default

The mortgage provides that in case of default in the payment of interest continuing for the period of three months or default in the payment of principal, or in the observance or performance of any covenants, conditions or agreements on the part of the Railroad Company in the bonds or in the mortgage contained continuing for the period of three months after written notice from the Trustees, or in case an order be made for the appointment of a Receiver, the Trustees may, and upon the written request of the holders of twenty-five per cent. in amount of the bonds then outstanding shall, by notice in writing, declare the principal of all of the outstanding bonds to be due and payable immediately. The mortgage provides that the holders of a majority in amount of the bonds then outstanding may waive any default that shall have happened and its consequences upon the remedying of such default. It gives the holders of a majority in amount of bonds outstanding the right to direct and to control the action of the Trustees, and the exercise of the remedies provided by the mortgage.

(Testimony of M. J. Curry.)

Sale and Purpose of Issue

The Railroad Company has sold said bonds for cash at the price of 94 $\frac{1}{4}$ % of their face amount together with accrued interest thereon and the proceeds are to be applied to reimburse the Railroad Company for capital expenditures and for the cost of certain proposed construction, completion, extension and improvement of facilities; all of such expenditures made or proposed to be made having been of a character with respect to which bonds may be issued and the proceeds of bonds paid out under the terms of Section 2 of Article Second of said First Mortgage and having been set forth in detail in the application of the Railroad Company to the Interstate Commerce Commission upon which the above mentioned order of March 17, 1925 was based.

Changes in Capitalization

Since the previous application A-5667, dated May 10, 1922, there has been no change in the amount of capital stock or funded debt of the Railroad Company authorized and outstanding except the issuance of the \$4,000,000 of Series A bonds covered by this application and the purchase of \$119,900 face amount of the Series A bonds and \$50,000 face amount of the Series B bonds for the sinking fund (making the total amount so purchased \$1,086,200 face amount), and the creation of an Equipment Trust Agreement and Lease between the Railroad Company and The Equitable Trust Company of

(Testimony of M. J. Curry.)

New York, as Trustee, dated March 1, 1923, securing an issue of 5½% Equipment Trust Certificates, Series B, of the aggregate face amount of \$5,600,000, of which \$750,000 aggregate principal amount have been paid off, and also a certain Equipment Trust Agreement and Lease between the Railroad Company and The Equitable Trust Company of New York, as Trustee, dated March 15, 1924, securing an issue of 5½% Equipment Trust Certificates, Series C, of the aggregate face amount of \$3,105,000, of which \$207,000 aggregate principal amount have been paid off.

Properties

The properties of the Railroad Company are described in the original application for listing of Series A Bonds, No. A-4747, dated March 13, 1917, and in the subsequent applications No. A-5478, dated June 30, 1921, and A-5667, dated May 10, 1922.

Since December 31, 1921, the following important changes in mileage have occurred:

Completion of the Belt Line within the city of San Jose, Calif., operation commenced May 1, 1922.

Branch line Bidwell Junction to Bidwell Bar, Calif., 2.02 miles, operation commenced May 15, 1922.

Completion of 39.16 miles additional main line yard, industry and side tracks, the operation of which commenced on various dates between December 31, 1921 and 1924.

(Testimony of M. J. Curry.)

Completion of 4.26 miles additional branch line sidings and spurs. The operation of which commenced on various dates between December 31, 1921 and 1924.

Abandonment of 2.81 miles of branch line from Bridge E to Loyaltown, Calif., 1.99 miles December 1922 and .82 miles December, 1923.

Acquisition of joint interest with other carriers in 2.39 miles of yard tracks and sidings, operation of which commenced on various dates between December 31, 1921 and 1924.

Since December 31, 1921 the Railroad Company has made the following net additions to equipment:

	Subject to Equipment Trusts		
	Units	Series B	Series C
Locomotives:			
Mallett (80,000 pounds tractive power)	5		5
Mikado, heavy type (60,300 pounds tractive power)	11	6	5
Total	16		
Passenger train cars:			
Motor coaches	2		
Coaches	20		20
Baggage	20		20
Diners	8		8
Total	50		
Freight train cars:			
Automobile	300	100	200
Refrigerator	2,775	2,000	775
Flat	78		
Logging	200	100	100
Total	3,353		

(Testimony of M. J. Curry.)

Less cars destroyed and converted:

Box	26	
Box combination ventilated	2	
Stock	32	
Coal	90	
		150

Total	3,203	
-------------	-------	--

Cabooses	10	
----------------	----	--

Construction and maintenance equipment:

Locomotive cranes	3	
Jordan spreader	1	1
Water and outfit cars	20	
Lidgetwood	1	

Total	25	
-------------	----	--

Less cars destroyed and converted:

Ballast spreaders	2	
-------------------------	---	--

Total	23	
-------------	----	--

Floating equipment:

Tug boat	1	
----------------	---	--

Total units added December 31,

1921 to December 31, 1924 3,303

*Leased to Pacific Fruit Express Company.

Lien

Reference is made to the previous listing applications, Nos. A-4747, A-5478 and A-5667, for a description of the property subject to the lien of the mortgage prior to December 31, 1921. The property on which the mortgage constitutes a first lien includes the following:

Testimony of M. J. Curry.)

Mileage:

Main line mileage, San Francisco to Salt Lake City	926.41 miles
Branch lines, main track	115.98 miles
Second main track	6.06 miles
Yard tracks and sidings	251.96 miles
Total track miles	1,300.41 miles

Equipment:

Locomotives	139
Passenger cars	8
Freight cars	5,873
Service cars	329
Floating equipment	5
Total	6,354

The foregoing does not include additional un-mortgaged equipment covered by Equipment Trust Agreements, Series B and Series C, as follows:

Locomotives	16
Passenger cars	48
Freight cars	3,275

Securities:

1,000 shares Capital Stock (50% of outstanding) of the Salt Lake City Union Depot & Railroad Company, operating the passenger terminal, at Salt Lake City, leased to the Railroad Company and the Denver and Rio Grande Western Railroad Company;

4,500 shares of the Capital Stock (entire issue) of the Deep Creek Railroad Company, operating a line of railroad in Western Utah, 46 miles;

4,005 shares of the Capital Stock (entire issue) of Standard Realty and Development Company, organized to acquire and hold real estate in connection with the construction of the Railroad Company

Deposited Cash in the hands of Mortgage Trustees, as of July, 1925, including unwithdrawn proceeds of \$4,000,000 bonds covered by this application, \$4,405,430.17.

(Testimony of M. J. Curry.)

The First Mortgage contains a provision subjecting to its lien after acquired property purchased with bonds or their proceeds and property directly appurtenant to or forming an integral part of the mortgaged railroad, or securities representing the same, also additional securities of subsidiary companies as defined in the Mortgage, but the First Mortgage permits the Railroad Company to acquire with free funds, free from the lien of the Mortgage, additional lines of railroad, branches and extensions, equipment and securities.

From January 1, 1922, to December 31, 1924, inclusive, the Railroad Company has expended for road and equipment (including the above described additional equipment) the following amounts:

Road and structures	\$4,933,452.07
Equipment	11,284,889.42
General expense	6,737.07
Total	\$16,225,078.56

Dividends

All of the authorized Capital Stock consisting of \$47,500,000 par value of Common Stock and \$27,500,000 par value of Preferred Stock is issued and outstanding, and all of such stock except Directors' qualifying shares of Common Stock is held by The Western Pacific Railroad Corporation, a Delaware corporation.

The following dividends have been paid on the Preferred and Common Stocks:

(Testimony of M. J. Curry.)

DIVIDENDS—PREFERRED STOCK

Year	Rate	Amount Paid
1917	7½%	\$2,062,500
1918	None	
1919	3%	825,000
1920	7%	1,925,000
1921	6%	1,650,000
1922	6%	1,650,000
1923	6%	1,650,000
1924	6%	1,650,000
1925	4.588%	1,253,450

DIVIDENDS—COMMON STOCK

1925	5%	\$2,375,000
------	----	-------------

Prior to 1925, Railroad Company paid no dividends on its Common Stock.

CONSOLIDATED INCOME ACCOUNT OF THE WESTERN PACIFIC RAILROAD AND SUBSIDIARY COMPANIES YEAR ENDED DECEMBER 31, 1924

	The Western Pacific Railroad Co.	Tidewater Southern Railway Co.	Deep Creek Railroad Co.	Standard Realty and Development Co.	Western Refrigerator Line	Total	Eliminations	Consolidated Total
Freight revenue.....	\$10,974,251.95	\$208,107.19	\$62,897.78			\$11,245,256.92		\$11,245,256.92
Passenger revenue.....	2,082,199.76	18,947.94	5,507.93			2,106,655.63		2,106,655.63
Mail and express revenue.....	517,813.64	2,916.28	2,041.69			522,771.61		522,771.61
Miscellaneous revenue.....	796,201.61	1,644.27	694.44			798,540.32		798,540.32
Total revenue.....	\$14,370,466.96	\$231,615.68	\$71,141.84			\$14,673,224.48		\$14,673,224.48
Expenses operating.....	11,477,664.53	186,514.38	40,026.59	4,006.84		11,708,212.34	\$7,169.38	11,701,042.96
Taxes.....	877,172.89	15,161.39	5,220.00	11,063.21		908,617.49		908,617.49
Uncollectible railway revenues.....	6,911.48					6,911.48		6,911.48
Operating income.....	\$2,008,718.96	\$29,939.91	\$25,895.25	\$15,070.05		\$2,049,483.17	\$7,169.38	\$2,056,652.55
Other income:								
Rental of property.....	245,005.74	6,553.51		10,652.01		262,211.26	3,276.00	258,935.26
Hire of equipment; receipts.....	1,707,898.31		10.00			1,707,908.31	13,014.43	1,694,893.88
Dividend income.....	180.00					180.00		180.00
Income from funded securities.....	46,829.84					46,829.84		46,829.84
Income from unfunded securities and ac- counts.....	139,565.06	1,114.18	245.22	3,768.35		144,692.81	8,849.57	135,843.24
Miscellaneous income.....	10,003.00	57.24	528.00			10,588.24		10,588.24
Gross income.....	\$4,158,200.01	\$37,664.84	\$26,678.47	\$649.69		\$4,221,893.63	\$17,970.62	\$4,203,923.01
Income deductions:								
Interest on funded debt, First Mortgage Bonds.....	1,369,371.16	16,641.66				1,386,012.82		1,386,012.82
Interest on funded debt, Equipment notes.....	393,749.96					393,749.96		393,749.96
Rental of leased property.....	139,777.08	3,276.00				143,053.08	3,276.00	139,777.08
Hire of equipment, payments.....	786,225.82		5,835.05			792,060.87	5,845.05	786,215.82
Miscellaneous deduc- tions.....	20,639.36	6,187.92	2,804.22			29,631.50	8,849.57	20,781.93
Amortization of dis- count on funded								

	The Western Pacific Railroad Co.	Tidewater Southern Railway Co.	Deep Creek Railroad Co.	Standard Realty and Development Co.	Western Refrigerator Line	Total	Eliminations	Consolidated Total
Freight revenue	\$10,974,251.95	\$208,107.19	\$62,897.78			\$11,245,256.92		\$11,245,256.92
Passenger revenue	2,082,199.76	18,947.94	5,507.93			2,106,655.63		2,106,655.63
Mail and express revenue	517,813.64	2,916.28	2,041.69			522,771.61		522,771.61
Miscellaneous revenue	796,201.61	1,644.27	694.44			798,540.32		798,540.32
Total revenue	\$14,370,466.96	\$231,615.68	\$71,141.84			\$14,673,224.48		\$14,673,224.48
Expenses operating	11,477,664.53	186,514.38	40,026.59	4,006.84		11,708,212.34	\$7,169.38	11,701,042.96
Taxes	877,172.89	15,161.39	5,220.00	11,063.21		908,617.49		908,617.49
Uncollectible railway revenues	6,911.48					6,911.48		6,911.48
Operating income	\$2,008,718.06	\$29,939.91	\$25,895.25	\$15,070.05		\$2,049,483.17	\$7,169.38	\$2,056,652.55
Other income:								
Rental of property	245,005.74	6,553.51		10,652.01		262,211.26	3,276.20	258,935.26
Hire of equipment, receipts	1,707,898.31		10.00			1,707,908.31	13,014.43	1,694,893.88
Dividend income	180.00					180.00		180.00
Income from funded securities	46,829.84					46,829.84		46,829.84
Income from unfunded securities and ac- counts	139,565.06	1,114.18	245.22	3,768.35		144,692.81	8,849.57	135,843.24
Miscellaneous income	10,003.00	57.24	528.00			10,588.24		10,588.24
Gross income	\$4,158,200.01	\$37,664.84	\$26,678.47	\$649.69		\$4,221,893.63	\$17,970.62	\$4,203,923.01
Income deductions:								
Interest on funded debt, First Mortgage Bonds	1,369,371.16	16,641.66				1,386,012.82		1,386,012.82
Interest on funded debt, Equipment notes	393,749.96					393,749.96		393,749.96
Rental of leased property	139,777.08	3,276.00				143,053.08	3,276.00	139,777.08
Hire of equipment, payments	786,225.82		5,835.05			792,060.87	5,845.05	786,215.82
Miscellaneous deduc- tions	20,639.36	6,187.92	2,804.22			29,631.50	8,849.57	20,781.93
Amortization of dis- count on funded debt	119,171.95	2,345.34				121,517.29		121,517.29
Total deductions	\$2,828,935.33	\$28,450.92	\$8,639.27			\$2,866,025.52	\$17,970.62	\$2,848,054.90
Net income	\$1,329,264.68	\$9,213.92	\$18,039.20	\$649.69	Not in Operation	\$1,355,868.11		\$1,355,868.11

THE WESTERN PACIFIC RAILROAD AND SUBSIDIARY COMPANIES
SUMMARY OF SURPLUS ACCOUNT CHANGES, DECEMBER 31, 1921 TO DECEMBER 31, 1924

	The Western Pacific Railroad Co.	Tidewater Southern Railway Company	Deep Creek Railroad Company	Standard Realty and Development Company	Western Refrigerator Line	Total
Net income	\$4,254,405.37	*\$620.52	\$11,850.78	\$2,487.39	*\$7,892.17	\$4,260,230.85
Add: Net miscellaneous credits	136,786.16	711,027.21	1,824.15	91,754.34		941,391.86
Total	\$4,391,191.53	\$710,406.60	\$13,674.93	\$94,241.73	*\$7,892.17	\$5,201,622.71
Deduct:						
Net miscellaneous debits	20,829.75		26.37		170.69	21,026.81
Dividends on Preferred Stock	4,950,000.00					4,950,000.00
Total deductions	4,970,829.75		26.37		170.69	4,971,026.81
Surplus	*579,638.22	\$710,406.69	\$13,648.56	\$94,241.73	*\$8,062.86	\$230,595.90
Surplus credit balance, December 31, 1921	\$5,582,112.08					
Surplus credit balance, December 31, 1924	5,812,707.98					
Increase	\$230,595.90					

**ANALYSIS OF SURPLUS ACCOUNTS DECEMBER 31, 1921 TO DECEMBER 31, 1924
THE WESTERN PACIFIC RAILROAD COMPANY**

	Year ending Dec. 31, 1922	Year ending Dec. 31, 1923	Year ending Dec. 31, 1924	Total
Net income for the year	\$1,105,345.18	\$1,819,795.51	\$1,329,264.68	\$4,254,405.37
Add: Net miscellaneous credits		2,259.60	134,526.56	136,786.16
Total	\$1,105,345.18	\$1,822,055.11	\$1,463,791.24	\$4,391,191.53
Deduct:				
Net miscellaneous debits	20,829.75			20,829.75
Dividends on Preferred Stock	1,650,000.00	1,650,000.00	1,650,000.00	4,950,000.00
Total deductions	\$1,670,829.75	\$1,650,000.00	\$1,650,000.00	\$4,970,829.75
Surplus	<u>*\$565,484.57</u>	<u>\$172,055.11</u>	<u>*\$186,208.76</u>	<u>*\$579,638.22</u>
Surplus credit balance, December 31, 1921	\$5,733,082.25			
Surplus credit balance, December 31, 1924	5,153,444.03			
Decrease	<u>\$579,638.22</u>			

TIDEWATER SOUTHERN RAILWAY COMPANY

Net income for the year	*\$14,882.68	\$5,048.24	\$9,213.92	\$620.52
Add: Net miscellaneous credits	2,571.62	625,853.14	82,602.45	711,027.21
Total	*\$12,311.06	\$630,901.38	\$91,816.37	\$710,406.69
Deduct:				
Net miscellaneous debits				
Total deductions				
Surplus	<u>*\$12,311.06</u>	<u>\$630,901.38</u>	<u>\$91,816.37</u>	<u>\$710,406.69</u>
Surplus debit balance, December 31, 1921	\$166,022.14			
Surplus credit balance, December 31, 1924	544,384.55			
Increase	<u>\$710,406.69</u>			

DEEP CREEK RAILROAD COMPANY

Net income for the year	*\$18,434.31	\$12,245.89	\$18,039.20	\$11,850.78
Add: Net miscellaneous credits	40.26	1,783.89		1,824.15
Total	*\$18,394.05	\$14,029.78	\$18,039.20	\$13,674.93
Deduct:				
Net miscellaneous debits			\$26.37	\$26.37
Total deductions			\$26.37	\$26.37

	Dec. 31, 1922	Dec. 31, 1923	Dec. 31, 1924	Total
Net income for the year	\$1,105,345.18	\$1,819,795.51	\$1,329,264.68	\$4,254,405.37
Add: Net miscellaneous credits		2,259.60	134,526.56	136,786.16
Total	\$1,105,345.18	\$1,822,055.11	\$1,463,791.24	\$4,391,191.53
Deduct:				
Net miscellaneous debits	20,829.75			20,829.75
Dividends on Preferred Stock	1,650,000.00	1,650,000.00	1,650,000.00	4,950,000.00
Total deductions	\$1,670,829.75	\$1,650,000.00	\$1,650,000.00	\$4,970,829.75
Surplus	*\$565,484.57	\$172,055.11	*\$186,208.76	*\$579,638.22
Surplus credit balance, December 31, 1921	\$5,733,082.25			
Surplus credit balance, December 31, 1924	5,153,444.03			
Decrease	\$579,638.22			

TIDEWATER SOUTHERN RAILWAY COMPANY

Net income for the year	*\$14,882.68	\$5,048.24	\$9,213.92	\$620.52
Add: Net miscellaneous credits	2,571.62	625,853.14	82,602.45	711,027.21
Total	*\$12,311.06	\$630,901.38	\$91,816.37	\$710,406.69
Deduct:				
Net miscellaneous debits				
Total deductions				
Surplus	*\$12,311.06	\$630,901.38	\$91,816.37	\$710,406.69
Surplus debit balance, December 31, 1921	\$166,022.14			
Surplus credit balance, December 31, 1924	544,384.55			
Increase	\$710,406.69			

DEEP CREEK RAILROAD COMPANY

Net income for the year	*\$18,434.31	\$12,245.89	\$18,039.20	\$11,850.78
Add: Net miscellaneous credits	40.26	1,783.89		1,824.15
Total	*\$18,394.05	\$14,029.78	\$18,039.20	\$13,674.93
Deduct:				
Net miscellaneous debits			\$26.37	\$26.37
Total deductions			\$26.37	\$26.37
Surplus	*\$18,394.05	\$14,029.78	\$18,012.83	\$13,648.56
Surplus credit balance, December 31, 1921	\$3,617.79			
Surplus credit balance, December 31, 1924	17,266.35			
Increase	\$13,648.56			

*Denotes red figures.

STANDARD REALTY AND DEVELOPMENT COMPANY

	Year Ending Dec. 31, 1922	Year Ending Dec. 31, 1923	Year Ending Dec. 31, 1924	Total
Net income for the year	\$25.93	\$3,111.15	*\$649.69	\$2,487.39
Add: Net miscellaneous credits	48,606.77	43,110.36	37.21	91,754.34
Total	\$48,632.70	\$46,221.51	*\$612.48	\$94,241.73
Deduct:				
Net miscellaneous debits				
Total deductions				
Surplus	\$48,632.70	\$46,221.51	*\$612.48	\$94,241.73
Surplus credit balance, December 31, 1921	\$11,434.18			
Surplus credit balance, December 31, 1924	105,675.91			
Increase	\$94,241.73			

WESTERN REFRIGERATOR LINE

Net income for the year		*\$7,892.17		*\$7,892.17
Add: Net miscellaneous credits				
Total		*\$7,892.17		*\$7,892.17
Deduct:				
Net miscellaneous debits			\$170.69	\$170.69
Total deduction			\$170.69	\$170.69
Surplus		*\$7,892.17	*\$170.69	*\$8,062.86
Surplus, December 31, 1921	None			
Surplus debit balance, December 31, 1924	\$8,062.86			
Decrease	\$8,062.86			

*Denotes red figures.

CONSOLIDATED GENERAL BALANCE SHEET DECEMBER 31, 1924

ASSETS

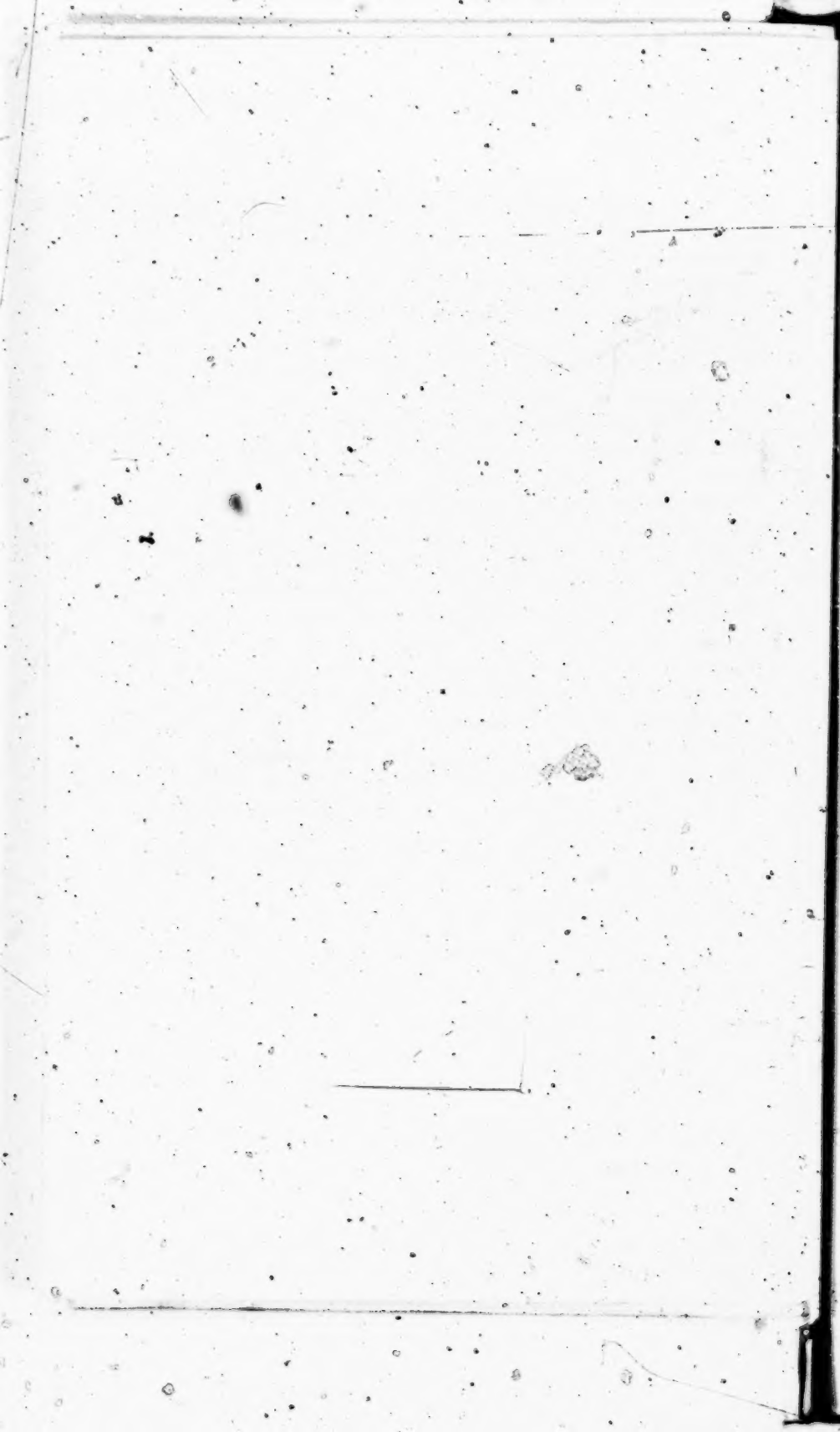
	The Western Pacific Railroad Company	Tidewater Southern Railway Co.	Deep Creek Railroad Co.	Standard Realty and Development Company	Western Refrigerator Line	Total	Eliminations	Consolidated Total
Investments:								
Investment in railroad and equipment	\$114,150,982.51	\$2,452,995.34	\$518,956.76			\$117,122,934.60		\$117,122,934.60
Investment in real estate and improvements				\$674,112.65		674,112.65		674,112.65
Sinking funds	50,112.27	350.45				50,462.72		50,462.72
Deposits in lieu of mortgaged property sold	2,699.00					2,699.00		2,699.00
Miscellaneous physical property	372,370.88	40,755.75				413,126.63		413,126.63
Investments in affiliated companies	2,160,561.79			127,965.00		2,288,526.79	\$2,288,526.79	
Other investments	141,967.14			75,000.00		216,967.14		216,967.14
Total investments	\$116,878,693.59	\$2,494,101.54	\$518,956.75	\$877,077.65		\$120,768,829.53	\$2,288,526.79	\$118,480,302.74
Current assets:								
Cash	752,387.49	167,446.16	10,906.88	1,540.86	\$6,991.32	939,272.71		939,272.71
Deposits of mortgage trust funds	3,568,000.00					3,568,000.00		3,568,000.00
Deposits of equipment trust funds	46,695.92					46,695.92		46,695.92
Special deposits	24,770.34	1,250.00				26,020.34		26,020.34
Traffic and car service balances receivable	436,083.00		5,372.31			441,455.31	28,719.37	412,735.94
Net balance receivable from agents and conductors	137,433.52		146.87			137,580.39		137,580.39
Miscellaneous accounts receivable	1,199,354.82	16,581.38	673.26	20,934.88		1,237,544.34	108,063.55	1,129,480.79
Material and supplies	1,879,870.92	38,204.71	2,496.96			1,920,572.59		1,920,572.59
Interest and dividends receivable	2,483.25					2,483.25		2,483.25
Other current assets	20,585.10					20,585.10		20,585.10
Total current assets	\$8,067,664.36	\$223,482.25	\$19,596.28	\$22,475.74	\$6,991.32	\$8,340,209.95	\$136,782.92	\$8,203,427.03
Deferred assets:								
Working fund advances	3,568.60					3,568.60		3,568.60
Total deferred assets	\$3,568.60					\$3,568.60		\$3,568.60
Unadjusted debits:								
Rents and insurance premiums paid in advance	39,913.37	517.79	89.60			40,520.76		40,520.76
Discount on funded debt	2,214,041.65	38,039.65				2,252,081.30		2,252,081.30
Other unadjusted debits	660,433.58	4,864.66	2,563.55		85,000.00	752,861.79	85,000.00	667,861.79
Total unadjusted debits	\$2,914,388.60	\$43,422.10	\$2,653.15		\$85,000.00	\$3,045,463.85	\$85,000.00	\$2,960,463.85
Total assets	\$127,864,315.15	\$2,761,005.89	\$541,206.18	\$899,553.39	\$91,991.32	\$132,158,071.93	\$2,510,309.71	\$129,647,762.22
Excess of par over book value of Capital Stock and bonds of Affiliated companies							\$178,214.28	\$178,214.28
							\$2,688,523.99	\$129,469,547.94

\$2,688,523.99 \$129,469,547.94

LIABILITIES

Capital Stock:									
Common	\$47,500,000.00	\$1,176,482.00	\$450,000.00	\$400,500.00	\$100,000.00	\$49,526,982.00	\$2,098,468.00	\$47,528,514.00	
Preferred	27,500,000.00					27,500,000.00		27,500,000.00	
Premium on Capital Stock		498,045.00				498,045.00		498,045.00	
Total Stock	\$75,000,000.00	\$1,674,527.00	\$450,000.00	\$400,500.00	\$100,000.00	\$77,625,027.00	\$2,098,468.00	\$75,526,559.00	
Long term debt:									
Funded debt (First Mortgage Gold Bonds)	26,827,300.00	313,000.00				27,140,300.00	157,000.00	26,983,300.00	
Funded debt (Equipment Trust Certificates)	8,123,000.00					8,123,000.00		8,123,000.00	
Total long term debt	\$34,950,800.00	\$313,000.00				\$35,263,300.00	\$157,000.00	\$35,106,300.00	
Debt to affiliated companies:									
Open accounts	554,887.50					554,887.50		554,887.50	
Total debt to affiliated companies	\$554,887.50					\$554,887.50		\$554,887.50	
Current liabilities:									
Loans and bills payable			45,000.00	351,273.07		396,273.07	296,273.07	100,000.00	
Traffic and car service balance payable	343,375.24					343,375.24	*6,574.22	349,949.46	
Audited accounts and wages payable	870,270.45	73,733.08	22,206.31	18,849.13	54.18	985,113.15	108,063.55	877,049.60	
Miscellaneous accounts payable	104,558.60	122,697.34	21.39			227,277.33	35,293.59	191,983.74	
Interest matured unpaid	24,770.34	1,250.60				26,020.34		26,020.34	
Unmatured interest accrued	566,129.18	4,859.37	601.00			571,589.55		571,589.55	
Unmatured rents accrued	5,241.66					5,241.66		5,241.66	
Other current liabilities	24,629.55					24,629.55		24,629.55	
Total current liabilities	\$1,938,975.02	\$202,539.79	\$67,828.78	\$370,122.20	\$54.18	\$2,579,519.89	\$433,055.99	\$2,146,463.90	
Deferred liabilities:									
Other deferred liabilities	17,510.30					17,510.30		17,510.30	
Total deferred liabilities	\$17,510.30					\$17,510.30		\$17,510.30	
Unadjusted credits:									
Tax liability	143,715.18	*282.78	119.25			143,551.65		143,551.65	
Accrued depreciation—equipment	2,545,737.70	22,427.39	4,914.83			2,573,079.92		2,573,079.92	
Other unadjusted credits	385,198.20	4,409.94	1,077.05	23,255.28		413,940.47		413,940.47	
Surplus investment equipment, and other property purchased	7,174,547.22					7,174,547.22		7,174,547.22	
Total unadjusted credits	\$10,249,198.30	\$26,554.55	\$6,111.13	\$23,255.28		\$10,305,119.26		\$10,305,119.26	
Surplus:									
Additions to property through income and surplus	3,413,305.66	1,301.92	1,446.54			3,416,054.13		3,416,054.13	
Funded debt retired through income and surplus	299,887.73					299,887.73		299,887.73	
Sinking fund reserves	50,112.27	156,765.95				206,878.22		206,878.22	
Profit and loss balance	1,390,138.37	386,316.67	15,819.81	105,675.91	*8,062.86	1,889,887.90		1,889,887.90	
Total surplus	\$5,153,444.03	\$544,384.55	\$17,266.35	\$105,675.91	*8,062.86	\$5,812,707.98		\$5,812,707.98	
Total liabilities	\$127,864,315.15	\$2,761,005.89	\$541,206.18	\$899,553.39	\$91,991.32	\$132,158,071.93	\$2,688,523.99	\$129,469,547.94	

*Denotes red figures.



(Testimony of M. J. Curry.)

THE WESTERN PACIFIC RAILROAD COMPANY CAPITAL STOCK OF SUBSIDIARY COMPANIES OUTSTANDING AND AMOUNT OWNED BY THE WESTERN PACIFIC RAILROAD COMPANY.

Issued Company	Par value Capital Stock outstanding	Percentage owned by Western Pacific	Par value owned by Western Pacific
Tidewater Southern Railway Company	\$1,176,482.00	99.57 + %	\$1,147,968.00
Deep Creek Railroad Company	450,000.00	100%	450,000.00
Standard Realty Development Company	400,500.00	100%	400,500.00
Western Refrigerator Line	15,000.00	100%	15,000.00

EXCESS OF PAR OVER BOOK VALUE OF STOCKS AND BONDS OF AFFILIATED COMPANIES, DECEMBER 31, 1924

	Book value	Par value	Excess of par and book value
The Western Pacific Railroad Co.:			
Capital Stock:			
Standard Realty and De- velopment Company	\$175,439.78	\$400,500.00	\$225,060.22
Tidewater Southern Railway Company	1,223,848.94	1,147,968.00	75,880.94
Standard Realty & Development Co.:			
First Mortgage Bonds:			
Tidewater Southern Railway Company	127,965.00	157,000.00	29,035.00
Total	\$1,527,253.72	\$1,705,468.00	\$178,214.28

(Testimony of M. J. Curry.)

THE WESTERN PACIFIC RAILROAD AND SUBSIDIARY COMPANIES STATEMENT OF FUNDED DEBT AS OF DECEMBER 31, 1924.

The Western Pacific Railroad Company First Mortgage Gold Bonds maturing March 1, 1946:

Issued June 26, 1916.....	\$19,730,000.00
Issued May 31, 1921.....	4,117,300.00
Issued February 15, 1922.....	2,980,000.00
Total outstanding.....	\$26,827,300.00

The Western Pacific Railroad Company 5½% Equipment Trust Certificates:

Total amount issued February 21, 1923.....	\$3,600,000.00
Par value maturing serially on the first day of March in each year from 1924 to 1937 inclusive.....	\$375,000.00
Par value maturing on March 1, 1938.....	350,000.00
Total amount outstanding December 31, 1924.....	\$5,225,000.00

The Western Pacific Railroad Company 5½% Equipment Trust Certificates Series "C":

Total amount issued March 10, 1924.....	\$3,105,000.00
Par value maturing serially on the first day of December in each year from 1924 to 1938 inclusive.....	207,000.00
Total amount outstanding December 31, 1924.....	\$2,898,000.00

Tidewater Southern Railway Company First Mortgage Thirty-Year 5% Gold Bonds maturing April 15, 1942, issued April 15, 1912:

Total amount outstanding December 31, 1924.....	\$313,000.00
---	--------------

Policy as to Depreciation

No specific amount is set aside either monthly or annually on account of depreciation of roadway or structures, but all such property is fully maintained and when retired or replaced is written out of capital account by charges to operating expenses.

(Testimony of M. J. Curry.)

With respect to equipment, charges are made monthly to operating expenses and corresponding amounts credited to "Accrued Depreciation Equipment," at a general rate of $2\frac{1}{4}\%$ per annum on the original cost of the equipment.

Agreements

The Western Pacific Railroad Company agrees with the New York Stock Exchange as follows:

Not to dispose of an integral asset or its stock interest in any constituent, subsidiary, owned or controlled company, or allow any of said constituent, subsidiary, owned or controlled companies to dispose of an integral asset or stock interest in other companies unless for retirement and cancellation, without notice to the Stock Exchange.

To publish statement of earnings monthly and annually.

To publish once, in each year and submit to the stockholders, at least fifteen days in advance of the annual meeting of the Corporation, a statement of its financial condition, a consolidated income account covering the previous fiscal year; and a consolidated balance sheet showing assets and liabilities at the end of the year; or an income account and balance sheet of the parent company and all constituent, subsidiary, owned or controlled companies, subject to I. C. C. regulations.

To maintain, in accordance with the rules of the Stock Exchange, a transfer office or agency in the

(Testimony of M. J. Curry.)

Borough of Manhattan, City of New York, where all listed securities shall be directly transferable, and the principal of all listed securities with interest or dividends thereon shall be payable; also a registry office in the Borough of Manhattan, City of New York, other than its transfer office or agency in said city, where all listed securities shall be registered.

To notify the Stock Exchange thirty days in advance of the effective date of any change in the authorized amounts of listed securities.

Not to make any change in listed securities or of a trustee of its bonds or other securities, without the approval of the Committee on Stock List, and not to select as a trustee an officer or director of the Company.

To notify the Stock Exchange in the event of the issuance or creation in any form or manner of any rights to subscribe to, or to be allotted, its securities, or of any other rights or benefits pertaining to ownership in its listed securities, so as to afford the holders of its listed securities a proper period within which to record their interests, and that all such rights to subscribe or to receive allotments and all other such rights and benefits shall be transferable; and shall be transferable, payable and deliverable in the Borough of Manhattan, City of New York.

To notify the Stock Exchange of the issuance of additional amounts of listed securities, and make immediate application for the listing thereof.

(Testimony of M. J. Curry.)

To publish promptly to holders of listed bonds and stocks any action in respect to interest on bonds, dividends on shares, or allotment of rights for subscription to securities, notices thereof to be sent to the Stock Exchange, and to give to the Stock Exchange at least ten days' notice in advance of the closing of the transfer books or extensions, or the taking of a record of holders for any purpose.

To redeem Preferred Stock in accordance with the requirements.

To notify the Stock Exchange if deposited collateral is changed or removed.

To have on hand at all times a sufficient supply of bonds to meet the demands for transfer.

General

The fiscal year of the Railroad Company ends on the 31st day of December.

The principal office of the Company is in the Mills Building, San Francisco, California.

The annual meeting of stockholders is held on the last Wednesday in March at the principal office of the Railroad Company in San Francisco, California.

The names and addresses of the Directors, whose terms expire March 31, 1926, are: A. W. Krech, John B. Dennis, Frederick H. Ecker, Andrew M. Hunt, G. W. Murray, and A. R. Baldwin of New York, N. Y., C. M. Levey, William Fries, F. H. Angellotti, J. G. Hooper, Campbell McGregor and

(Testimony of M. J. Curry.)

Wellington T. Smith, of San Francisco, California, John L. Nagle of Sacramento, California, Thomas F. Baxter, of Stockton, California, and C. M. Nibley of Salt Lake City, Utah.

The Executive Committee is: A. W. Krech, J. P. Dennis, F. H. Ecker, A. M. Hunt, G. W. Murray, A. R. Baldwin and C. M. Levey.

The Officers of the Railroad Company are: Chairman of the Board, A. W. Krech, President, C. M. Levey, Vice-Presidents, F. W. M. Cutcheon, A. R. Baldwin, E. W. Mason, and Charles Elsey; Secretary, W. G. Bruen; Treasurer, Charles Elsey; Assistant Secretary and Assistant Treasurer, S. C. Matthews.

The bonds may be transferred and registered at The Equitable Trust Company of New York, 37 Wall Street, New York, N. Y.

The agent for the payment of interest is The Equitable Trust Company of New York.

The places for the payment of the principal are at the office of The Equitable Trust Company of New York, or of the First Federal Trust Company of San Francisco, California.

THE WESTERN PACIFIC RAILROAD COMPANY,

By **S. C. MATTHEWS,**
Assistant Secretary.

This Committee recommends that the above-mentioned \$4,900,000 additional First Mortgage Five per Cent. Bonds, Series A, due March 1, 1946, Nos.

(Testimony of M. J. Curry.)

M-23,297 to M-27,296, inclusive, for \$1,000 each (and registered bonds issued in exchange for coupon bonds) be added to the list on official notice of distribution and sale to the public, in accordance with the terms of this application, making the total amount of Series A Bonds authorized to be listed \$28,180,000.

ROBERT GIBSON,
Chairman.

Adopted by the Governing Committee, August 26,
1925.

HARRISON S. MARTIN,
First Assistant Secretary.

Mr. McCollum: I should like to offer the statement of September 30, 1926 as Irving Trust Company Exhibit 7.

(The document was marked "Irving Trust Company's Exhibit 7.")

(Testimony of M. J. Curry.)

IRVING TRUST CO. EXHIBIT No. 7

Francis E. Fitch (Inc.), 138 Pearl St., New York

A-7277

Committee On Stock List,
New York Stock ExchangeThe Western Pacific Railroad Company
(Organized under the laws of California)
(Controlled by stock ownership by the Western
Pacific Railroad Corporation of Delaware)

First Mortgage Five Per Cent. Gold Bonds,

Series A, Due March 1, 1946.

Additional listing, Series A Bonds.....\$ 2,600,000

Authorized First Mortgage Bonds..... 50,000,000

Amount issued:

Series A, 5% Bonds..... 28,180,000

Series B, 6% Bonds..... 3,000,000

Total listing applied for:

Series A 30,780,000

Series B 3,000,000

This additional issue:

Indenture authorized by stockholders July 13,
1916.Authorized by Board of Directors Mar. 1, 1926
and July 6, 1926.Approved by Interstate Commerce Commission
by its order June 15, 1926.I. C. C. Finance Docket No. 5503, and by California
Railroad Commission by its decision No. 17,
046, July 2, 1926. No other authority necessary.

(Testimony of M. J. Curry.)

CAPITAL SECURITIES

Stock: Classes:	Par value	Number of Shares			
		Authorized by Charter	Authorized for Issuance	Previously Listed or Authorized to be Listed	Outstanding
Preferred	\$100	275,000	275,000	No	275,000
Common	100	475,000	475,000	No	475,000

Mortgage Bonds:

First Mortgage, due Mar.
1, 1946.

	Interest Rate	Amount Authorized	Authorized for Issuance	Previously Listed or Authorized to be Listed	Outstanding
		Total amount of First Mortgage Bonds authorized under Mortgage			
Series "A"	5%	\$50,000,000	\$30,780,000	\$28,180,000	\$27,774,400
Series "B"	6%		3,000,000	3,000,000	2,950,000

Equipment Trust Obli-
gations:

Titles and dates of maturity:

*Equipment Trust Cdfs.....	5½%	\$5,600,000	\$5,600,000	No	\$4,475,000
†Equipment Trust Ctf.....	5½%	3,105,000	3,105,000	No	2,691,000
(Series "C")					

*Certificates in amount of \$375,000 payable March 1st of each year from 1924 to 1937, inclusive, and, \$350,000 March 1, 1938.

†Certificates in amount of \$207,000 payable December 1st of each year from 1924 to 1938, inclusive.

(Testimony of M. J. Curry.)

New York, September 30, 1926.

Referring to its previous applications, especially to A-6800, dated July 16, 1925, The Western Pacific Railroad Company (hereinafter called the "Railroad Company") hereby makes application for the listing on the New York Stock Exchange of \$2,600,000 additional (of a total authorized issue of \$50,000,000) of its First Mortgage Five per Cent. Gold Bonds, Series A, due March 1, 1946, consisting of Nos. M 27327 to M.29926 both inclusive, for \$1,000 each (and such fully registered bonds as may be issued in exchange for coupon bonds), on official notice of issuance and distribution for sale to the public, making the total amount of Series A Bonds issued and applied for \$30,780,000. There are also \$3,000,000 Series B Bonds issued and listed. The Bonds of Series A and Series B rank equally under the Mortgage.

Authority for and Purpose of Issue

The issuance of said \$2,600,000 Series A Bonds of the Railroad Company, covered by this application, was authorized by resolutions of the Board of Directors of the Railroad Company adopted March 1, 1926 and July 6, 1926, and their authentication was authorized by a further resolution adopted by the Board of Directors on August 2, 1926. No action by the stockholders of the Railroad Company is required by the provisions of the First Mortgage of the Railroad Company, dated June 26, 1916, herein-

(Testimony of M. J. Curry.)

after mentioned, or by any laws or regulations applicable to the issuance and sale of any bonds secured by said First Mortgage. The issuance and sale of said \$2,600,000 Series A Bonds at not less than ninety-two per cent. of their face amount and accrued interest and for the purposes hereinafter stated were approved by decision No. 17,046 of the California Railroad Commission dated July 2, 1926, and by order of the Interstate Commerce Commission, dated June 15, 1926, in Finance Docket No. 5503. No further authority is required.

The Railroad Company has contracted for the sale of said bonds for cash at the price of 99 $\frac{3}{4}$ % of their face amount together with accrued interest thereon and the proceeds are to be applied to reimburse the Railroad Company for capital expenditures and for the cost of certain proposed construction, completion, extension and improvement of facilities; all of such expenditures made or proposed to be made having been of a character with respect to which bonds may be issued and the proceeds of bonds paid out under the terms of Section 2 of Article Second of said First Mortgage and having been set forth in detail in the application of the Railroad Company to the Interstate Commerce Commission upon which the above mentioned order of June 15, 1926, was based.

Description

The First Mortgage Bonds are secured by the Railroad Company's First Mortgage, dated June

(Testimony of M. J. Curry.)

26, 1916, to First Federal Trust Company (now Crocker First Federal Trust Company) (of San Francisco, California), and Henry E. Cooper (37 Wall Street, New York City), Trustees. The bonds covered by this application are an additional issue of Series A Bonds of \$2,600,000 principal amount, all bearing interest at the rate of five per cent. per annum, dated June 26, 1916, and maturing March 1, 1946.

The principal of the bonds is payable at the office or agency of the Railroad Company in the Borough of Manhattan, City of New York, N. Y., and the interest thereon is payable at its said office or agency, or at the option of the holder at its office or agency in the City and County of San Francisco, semi-annually, on March 1st and September 1st. Both principal of and interest upon each bond are payable in gold coin of the United States of America of or equal to the standard of weight and fineness as it existed June 26, 1916, without deduction for any tax, assessment or other governmental charge (except the Federal Income Tax imposed by the Act of Congress approved October 3, 1913, with respect to income derived from interest paid thereon), which the Railroad Company or the Trustees under the mortgage securing the bonds, or either of them, may be required to pay thereon or to retain therefrom under any present or future law or ordinance of the United States of America, or of any State, territory, municipality, or other taxing

(Testimony of M. J. Curry.)

authority therein; and the Railroad Company assumes the payment of all such taxes, assessments and charges with the exception aforesaid.

The bonds are in coupon form of the denominations of \$1,000, and \$500 and \$100 and are registrable as to principal only. Coupon bonds for \$1,000 are interchangeable with registered bonds of the denominations of \$1,000, \$5,000 and \$10,000, or multiples of \$10,000. Coupon bonds for \$1,000, \$500 and \$100 are also interchangeable in equal principal amounts. For any such exchange and for any transfer of registered bonds or of coupon bonds registered as to principal, the Company, at its option, may require the payment of a sum sufficient to reimburse it for any stamp tax or other governmental charge and except in case of coupon bonds registered as to principal an additional amount not exceeding \$1 for each new bond issued upon such exchange or transfer.

Sinking Fund

The Mortgage securing the bonds provides for the creation of a sinking fund, to be especially applied to the purchase or redemption of bonds, and requires the Railroad Company for that purpose to pay, out of any income lawfully applicable thereto, after payment of operating expenses of every description, taxes and interest upon the bonds, the sum of \$50,000 on January 1st of each year, commencing with the year 1919. Series A Bonds are re-

(Testimony of M. J. Curry.).

deemable through the sinking fund at par and accrued interest on at least sixty days' previous published notice, as described under redemption. All bonds purchased or redeemed by the sinking fund are to be cancelled and delivered to the Railroad Company. These provisions have been fully complied with.

Redemption

The Railroad Company may redeem all or any part of said Series A Bonds on any semi-annual interest payment date, at par and accrued interest, on notice published once in each calendar week for eight successive weeks in two newspapers of general circulation published in the Borough of Manhattan, New York, N. Y., and one newspaper of general circulation published in San Francisco, California, one such publication to be not less than sixty nor more than ninety days before the date of redemption. The Company may elect to redeem the bonds of one or more series.

All bonds redeemed are to be cancelled or indelibly stamped with a statement that they have been redeemed. In the case, however, of bonds hereafter refunded with, or exchanged for, or the payment, redemption or retirement otherwise, whereof shall be provided for by means of, refunding bonds or other obligations of the Railroad Company issued under a mortgage or other instrument providing that bonds redeemed pursuant to the provisions of the First Mortgage, notwithstanding that they shall

(Testimony of M. J. Curry.)

have been cancelled or marked "Cancelled," shall be deposited with the Trustees under such new mortgage or other instrument, as security for such refunding bonds or other obligations, the bonds so redeemed and deposited shall be deemed to remain alive and unextinguished in the hands of the Trustees under such new mortgage or other instrument for the security of such refunding bonds or other obligations, to the extent specified in section 2 of Article Third of the Mortgage.

Default

The Mortgage provides that in case of default in the payment of interest continuing for the period of three months or default in the payment of principal, or in the observance or performance of any covenants, conditions or agreements on the part of the Railroad Company in the bonds or in the Mortgage contained continuing for the period of three months after written notice from the Trustees, or in case an order be made for the appointment of a Receiver, the Trustees may, and upon the written request of the holders of twenty-five per cent. in amount of the bonds then outstanding shall, by notice in writing, declare the principal of all of the outstanding bonds to be due and payable immediately. The mortgage provides that the holders of a majority in amount of the bonds then outstanding may waive any default that shall have happened and its consequences upon the remedying of such default. It gives the holders of a majority in

(Testimony of M. J. Curry.)

amount of bonds outstanding the right to direct and to control the action of the Trustees, and the exercise of the remedies provided by the Mortgage.

Changes in Capitalization

Since December 31, 1924 (the date as of which the consolidated balance sheet contained in said previous application A-6800 was made) there has been no change in the amount of Capital Stock or funded debt of the Railroad Company authorized and outstanding except

First: The issuance of the \$4,000,000 of Series A 5% Bonds covered by said application A-6800, and

Second: The purchase of \$72,000 face amount of the Series "A" 5% Bonds, and \$30,000 face amount of the Series "B" 6% Bonds for the sinking fund (making the total amount so purchased \$455,600); and

Third: The retirement of \$750,000 (face amount) of its 5½% Equipment Trust Certificates, Series "B" and \$207,000 (face amount) of its 5½% Equipment Trust Certificates, Series "C."

Properties

The properties of the Railroad Company are described in the original application for listing of Series "A" Bonds, No. A-4747, dated March 13, 1917, and in the subsequent applications No. A-5478, dated

(Testimony of M. J. Curry.)

June 30, 1921; A-5667, dated May 10, 1922; and A-6800, dated July 16, 1925.

Since December 31, 1924, the following important changes in mileage have occurred:

Completion of 20.98 miles additional main line yard, industry and side tracks, the operation of which commenced on various dates between December 31, 1924, and June 30, 1926.

Completion of .29 miles additional branch line spur and connecting tracks, the operation of which commenced on various dates in year 1925.

Abandonment of 2.94 miles of second main track at Arnold's Loop, between Arnold and Proctor, Nevada, November 5, 1925.

Acquisition of joint interest with other carriers in .90 miles of yard tracks, operation of which commenced on various dates in year 1925.

Since December 31, 1924, the Railroad Company has made the following net additions to equipment:

Locomotives:

Mikado, heavy type (60,300 pounds tractive power)	5
---	---

Passenger train cars:

Combination coach and baggage car	1
-----------------------------------	---

Freight train cars:

Box	12
-----	----

Stock	76
-------	----

Total	88
-------	----

(Testimony of M. J. Curry.)

Less cars destroyed and converted:

Automobile	2
Box	13
Flat	6
Stock	47
Clay	9
Tank	1
Refrigerator	4
	82
Total	6

Construction and maintenance equipment:

Outfit car	1
Supply car	1
	2
Total	2

Less cars destroyed:

Outfit car	1
	1
Total	1

Total units added December 31, 1924,
to June 30, 1926 13

Lien

Reference is made to the previous listing applications, Nos. A-4747, A-5478, A-5667, and A-6800, for a description of the property subject to the lien of the Mortgage prior to December 31, 1924. The property on which the Mortgage constitutes a first lien includes the following:

Mileage:

	Miles
Main line mileage, San Francisco to Salt Lake City	926.41
Branch lines, main track	115.98
Second main track	3.12
Yard tracks and sidings, etc.	273.23
Total track miles	1,318.74

(Testimony of M. J. Curry.)**Equipment:**

Locomotives	144
Passenger cars	9
Freight cars	5,885
Service cars	329
Floating equipment	5
Total	6,372

The foregoing equipment does not include additional unmortgaged equipment covered by Equipment Trust Agreements, Series B and C, as follows:

Locomotives	16
Passenger cars	48
Freight cars	3,269
Service cars	1

Securities:

1,000 shares Capital Stock (50% of outstanding) of The Salt Lake City Union Depot and Railroad Company, operating the the passenger terminal at Salt Lake City, leased to the Railroad Company and the Denver and Rio Grande Western Railroad Company.

4,500 shares of the Capital Stock (entire issue) of the Deep Creek Railroad Company, operating a line of railroad in Western Utah, 46 miles.

4,005 shares of the Capital Stock (entire issue) of Standard Realty and Development Company, organized to acquire and hold real estate in connection with the construction of the Railroad Company.

10,000 shares of the Capital Stock (entire issue) of Sacramento Northern Railway, operating 165.65 miles of main line of railroad in California.

(Testimony of M. J. Curry.)

\$5,196,204.46 par value First Mortgage 5% Twenty-Year Gold Bonds and Bond Participation Certificates of Sacramento Northern Railroad.

Deposited cash in the hands of Mortgage Trustees, as of June 30, 1926.....\$42,941.46

The First Mortgage contains a provision subjecting to its lien after acquired property purchased with bonds or their proceeds and property directly appurtenant to or forming an integral part of the mortgaged railroad, or securities representing the same, also additional securities of subsidiary companies as defined in the Mortgage, but the First Mortgage permits the Railroad Company to acquire with free funds, free from the lien of the Mortgage, additional lines of railroad, branches and extension, equipment and securities.

From January 1, 1925, to June 30, 1926, inclusive, the Railroad Company has expended for road and equipment; (including the above described additional equipment) the following amounts:

Road and structures and general expenses	\$1,975,622.53
Equipment	593,608.61
Total	\$2,569,231.14

Dividends

All of the authorized Capital Stock, consisting of \$47,500,000 par value of Common Stock and \$27,500,000 par value of Preferred Stock, is issued and outstanding, and all of such stock except Directors' qualifying shares of Common Stock is held by The

(Testimony of M. J. Curry.)

Western Pacific Railroad Corporation, a Delaware corporation.

The following dividends have been paid on the Preferred and Common Stocks since 1922:

DIVIDENDS—PREFERRED STOCK

Year	Rate	Amount paid
1923	6%	\$1,650,000
1924	6%	1,650,000
1925	7.558%	2,078,450
1926 (to June 30)	3%	825,000

DIVIDENDS—COMMON STOCK

Year	Rate	Amount paid
1925	5%	\$2,374,970

Prior to 1925, Railroad Company paid no dividends on its Common Stock.

Financial Statements

The Western Pacific Railroad Company and
Subsidiary Companies

**CONSOLIDATED INCOME ACCOUNT FOR YEAR ENDED
DECEMBER 31, 1925, AND SIX MONTHS ENDED
JUNE 30, 1926**

	Year ended Dec. 31, 1925	Six months ended June 30, 1926
Freight revenue	\$12,804,916.70	\$5,902,145.91
Passenger revenue	2,065,039.75	1,041,508.13
Mail and express revenue	435,048.91	186,885.03
Miscellaneous revenue	859,807.82	305,270.32
Total revenue	\$16,164,813.18	\$7,435,809.39

(Testimony of M. J. Curry.)

	Year ended Dec. 31, 1925	Six months ended June 30, 1926
Expenses operating	\$11,748,035.00	\$5,858,371.17
Taxes	1,027,204.67	657,003.87
Uncollectible railway revenues	1,637.88	899.89
Operating income	\$3,367,935.68	\$919,534.46
Other income:		
Rental of property	446,787.44	239,528.23
Hire of equipment, receipts	1,760,866.47	773,048.49
Dividend income		7,645.00
Income from funded securities	2,236.60	1,249.25
Income from unfunded securities and accounts	122,133.19	43,608.76
Miscellaneous income	2,796.88	7,322.00
Gross income	\$5,722,756.26	\$1,991,936.19
Income deductions:		
Interest on funded debt, First Mortgage Bonds	\$1,483,567.33	\$763,884.20
Interest on funded debt, Equip- ment Notes	428,628.71	200,502.50
Interest on funded debt, ad- vances	24,473.58	49,823.22
Rental of leased property	192,223.34	87,786.93
Hire of equipment, payments	902,549.85	336,715.94
Miscellaneous deductions	27,086.34	19,475.57
Amortization of discount on funded debt	126,258.83	65,245.17
Total deductions	\$3,184,787.98	\$1,523,433.53
Net income	\$2,537,968.28	\$468,502.66*

*Corresponding figure for the six months ended June 30, 1925, was \$339,188.88.

(Testimony of M. J. Curry.)

ANALYSIS OF SURPLUS ACCOUNT CHANGES—DECEMBER
31, 1924 TO JUNE 30, 1926

	Year ending Dec. 31, 1925	Six months ending June 30, 1926	Consolidated Total
Net income	\$2,537,968.28	\$468,502.66	\$3,006,470.94
Add: Net miscellaneous credits	1,500,172.06	1,945.92	1,502,117.98
Total	\$4,038,140.34	\$470,448.58	\$4,508,588.92
Deduct:			
Net miscellaneous debits		10,848.78	10,848.78
Dividends on Preferred Stock	2,078,450.00	825,000.00	2,903,450.00
Dividends on Common Stock	2,374,970.00		2,374,970.00
Total deductions	\$4,453,420.00	\$835,848.78	\$5,289,268.78
Surplus, decrease	\$415,279.66*	\$365,400.20*	\$780,679.86*
Surplus credit balance, Decem- ber 31, 1924	\$5,812,707.98		
Surplus credit balance, June 30, 1926	5,032,028.12		
Decrease	\$780,679.86		

*Denotes italic figures.

CONSOLIDATED GENERAL BALANCE SHEET, DECEMBER 31, 1925, AND JUNE 30, 1926

ASSETS

	Dec. 31, 1925	June 30, 1926
Investments:		
Investment in railroad and equipment	\$123,909,185.74	\$125,094,418.04
Investment in real estate and improvements	673,872.69	657,081.97
Sinking funds	50,239.96	244.96
Deposits in lieu of mortgaged property sold	2,327.50	6,216.00
Miscellaneous physical property	647,014.22	652,821.82
Other investments	405,238.20	472,238.20
Total investments	\$125,687,878.31	\$126,883,020.99
Current assets:		
Cash	\$2,390,058.97	\$1,913,742.07
Deposits of mortgage trust funds	221,350.91	40,941.46
Deposits of equipment trust funds	46,695.92	46,695.92
Special deposits	121,593.96	117,128.96
Traffic and car service balances receivable	436,894.86	516,172.96
Net balances receivable from agents and conductors	216,494.06	175,949.00
Miscellaneous accounts receivable	1,157,913.20	1,065,067.20
Material and supplies	2,005,141.93	2,114,466.81
Interest and dividends receivable	3,942.70	5,719.33
Other current assets	13,038.28	6,345.34
Total current assets	\$6,612,224.88	\$6,002,229.05
Deferred assets:		
Working fund advances	\$3,184.11	\$2,858.38
Total deferred assets	\$3,184.11	2,858.38
Unadjusted debits:		
Rents and insurance premiums paid in advance	\$44,089.02	\$54,988.05
Discount on funded debt	2,363,716.06	2,296,028.70
Other unadjusted debits	843,216.82	909,579.25
Total unadjusted debits	\$3,251,021.90	3,260,596.00
Total assets	\$135,554,309.20	\$136,148,704.42
Excess of par value over book value of Capital Stock and bonds of subsidiary companies	1,381,659.83	1,381,659.83
	<u>\$134,172,649.37</u>	<u>\$134,767,044.59</u>

LIABILITIES

	Dec. 31, 1925	June 30, 1926	
Capital Stock:			
Common	\$47,528,514.00	\$47,528,814.00	
Preferred	27,500,000.00	27,500,000.00	
Premium on Capital Stock	498,045.00	498,238.00	
Total stock			\$75,526,559.00
Long term debt:			\$75,527,052.00
Funded debt (First Mortgage Gold Bonds)	\$31,089,968.68	\$31,038,567.68	
Funded debt (Equipment Trust Certificates)	7,541,000.00	7,166,000.00	
Funded debt (Notes payable)	53,333.33	53,333.33	
Total long term debt			\$38,684,302.01
Debt to affiliated companies:			
Open accounts	\$1,524,473.58	\$2,425,000.00	
Total debt to affiliated companies			\$1,524,473.58
Current liabilities:			2,425,000.00
Loans and notes payable	\$9,965.65	\$118,965.65	
Traffic and car service balances payable	475,163.92	374,790.97	
Audited accounts and wages payable	911,443.20	943,773.27	
Miscellaneous accounts payable	206,727.69	116,410.93	
Interest matured unpaid	21,666.53	17,201.53	
Unmatured interest accrued	629,473.08	621,741.44	
Unmatured rents accrued	5,149.98	10,049.96	
Other current liabilities	45,749.04	80,181.50	
Total current liabilities			\$2,305,339.09
Deferred liabilities:			2,283,115.25
Other deferred liabilities	\$17,767.35	\$15,479.60	
Total deferred liabilities			\$17,767.35
Unadjusted credits:			15,479.60
Tax liability	\$150,469.31	\$339,566.21	
Accrued depreciation—equipment	3,108,337.35	3,394,469.44	
Other unadjusted credits	285,289.03	319,757.53	
Surplus—Investment, equipment and other property purchased	7,172,684.33	7,172,674.43	
Total unadjusted credits			\$10,716,780.02
Surplus:			11,226,467.61
Additions to property through income and surplus	\$3,986,409.62	\$4,360,964.68	
Funded debt retired through income and surplus	349,861.73	399,856.73	
Sinking fund reserves	233,655.46	190,657.96	
Profit and loss balance	827,501.51	80,548.80	

LIABILITIES

	Dec. 31, 1925	June 30, 1926
Capital Stock:		
Common	\$47,528,514.00	\$47,528,814.00
Preferred	27,500,000.00	27,500,000.00
Premium on Capital Stock	498,045.00	498,238.00
Total stock	\$75,526,559.00	\$75,527,052.00
Long term debt:		
Funded debt (First Mortgage Gold Bonds)	\$31,089,968.68	\$31,038,567.68
Funded debt (Equipment Trust Certificates)	7,541,090.00	7,166,000.00
Funded debt (Notes payable)	53,333.33	53,333.33
Total long term debt	\$38,684,302.01	38,257,902.01
Debt to affiliated companies:		
Open accounts	\$1,524,473.58	\$2,425,000.00
Total debt to affiliated companies	\$1,524,473.58	2,425,000.00
Current liabilities:		
Loans and notes payable	\$9,965.65	\$118,965.65
Traffic and car service balances payable	475,163.92	374,790.97
Audited accounts and wages payable	911,443.20	943,773.27
Miscellaneous accounts payable	206,727.69	116,410.93
Interest matured unpaid	21,666.53	17,201.53
Unmatured interest accrued	629,473.08	621,741.44
Unmatured rents accrued	5,149.98	10,049.96
Other current liabilities	45,749.04	80,181.50
Total current liabilities	\$2,305,339.09	2,283,115.25
Deferred liabilities:		
Other deferred liabilities	\$17,767.35	\$15,479.60
Total deferred liabilities	\$17,767.35	15,479.60
Unadjusted credits:		
Tax liability	\$150,469.31	\$339,566.21
Accrued depreciation—equipment	3,108,337.35	3,394,469.44
Other unadjusted credits	285,289.03	319,757.53
Surplus—Investment, equipment and other property purchased	7,172,684.33	7,172,674.43
Total unadjusted credits	\$10,716,780.02	11,226,467.61
Surplus:		
Additions to property through income and surplus	\$3,986,409.62	\$4,360,964.63
Funded debt retired through income and surplus	349,861.73	399,856.73
Sinking fund reserves	233,655.46	190,657.96
Profit and loss balance	827,501.51	80,548.80
Total surplus	\$5,397,428.32	5,032,028.12
Total liabilities	\$134,172,649.37	\$134,767,044.59



(Testimony of M. J. Curry.)

The Western Pacific Railroad Company

**CAPITAL STOCK OF SUBSIDIARY COMPANIES OUTSTANDING
AND AMOUNT OWNED BY THE WESTERN PACIFIC RAIL-
ROAD COMPANY**

Issuing Company	Par Value Capital Stock Outstanding	Percentage Owned by Western Pacific	Par Value Owned by Western Pacific
Tidewater Southern Railway Company	\$1,176,782.00	97.55%	\$1,147,968.00
Deep Creek Railroad Company	450,000.00	100%	450,000.00
Sacramento Northern Railway	1,000,000.00	100%	1,000,000.00
Standard Realty and Develop- ment Company	400,500.00	100%	400,500.00
Western Refrigerator Line	15,000.00	100%	15,000.00

**EXCESS OF PAR OVER BOOK VALUE OF STOCKS AND BONDS
OF AFFILIATED COMPANIES, JUNE 30, 1926**

	Book Value	Par Value	Excess of Par over Book Value
The Western Pacific Railroad Company:			
Capital Stock:			
Standard Realty & Develop- ment Co.	\$175,439.78	\$400,500.00	\$225,060.22
Tidewater Southern Rail- way Company	1,223,848.94	1,147,968.00	75,880.94*
First Mortgage Bonds:			
Sacramento Northern Rail- road	3,963,723.91	5,196,204.46	1,232,480.55*
Total	\$5,363,012.63	\$6,744,672.46	\$1,381,659.83

The Western Pacific Railroad Company and Subsidiary Companies

STATEMENT OF FUNDED DEBT AS OF JUNE 30, 1926

The Western Pacific Railroad Company First Mortgage

Gold Bonds maturing March 1, 1946:

Issued June 26, 1916, Series A, 5%	\$19,668,600.00
Issued May 31, 1921, Series A, 5%	4,105,800.00
Issued February 15, 1922, Series B, 6%	2,950,000.00
Issued April 24, 1925, Series, A, 5%	4,000,000.00
Total amount outstanding June 30, 1926	\$30,724,400.00

*Denotes red figures.

(Testimony of M. J. Curry.)

The Western Pacific Railroad Company 5½% Equipment Trust Certificates, Series "B":

Total amount issued February 21, 1923.....\$5,600,000.00

Par value maturing serially on the first
day of March in each year from 1924

to 1937 inclusive..... 375,000.00

Par value maturing on March 1, 1938..... 350,000.00

Total amount outstanding June 30, 1926.....\$4,475,000.00

The Western Pacific Railroad Company 5½% Equipment Trust Certificates, Series "C":

Total amount issued March 10, 1924.....\$3,105,000.00

Par value maturing serially on the first
day of December in each year from

1924 to 1938 inclusive..... 207,000.00

Total amount outstanding June 30, 1926.....\$2,691,000.00

Tidewater Southern Railway Company First Mortgage Thirty-Year Five per Cent. Gold Bonds maturing April 15, 1942, issued April 15, 1912:

Total amount outstanding June 30, 1926.....\$286,000.00

Sacramento Northern Railroad First Mortgage Twenty Year Five per Cent. Gold Bonds issued July 1, 1918 and maturing July 1, 1938, payment of which has been assumed by Sacramento Northern Railway (subsidiary of Railroad Company) the successor in ownership of all the property of the Sacramento Northern Railroad:

Total amount outstanding June

30, 1926.....\$5,224,373.14

Less amount owned by The West-
ern Pacific Railroad Company
and pledged under its said

First Mortgage.....5,196,204.46

\$28,168.68

Amount of note of Bisbee Investment Company dated January 14, 1925, in favor of California Trust and Savings Bank, maturing in installments due on various dates up to October 1, 1934, secured by mortgage on union passenger station, property of Sacramento Northern Railway in the City of Sacramento, which property was acquired by said Railway subject to said mortgage, which must be paid by Sacramento Northern Railway, outstanding on June 30, 1926.....

\$53,333.33

(Testimony of M. J. Curry.)

Policy as to Depreciation

No specific amount is set aside either monthly or annually on account of depreciation of roadway or structures, but all such property is fully maintained and when retired or replaced is written out of capital account.

With respect to equipment, charges are made monthly to operating expenses and corresponding amounts credited to "Accrued depreciation equipment," at a general rate of $2\frac{1}{4}\%$ per annum on the original cost of the equipment:

Agreements

The Western Pacific Railroad Company agrees with the New York Stock Exchange as follows:

Not to dispose of an integral assets or its stock interest in any constituent, subsidiary, owned or controlled company, or allow any of said constituent, subsidiary, owned or controlled companies to dispose of an integral asset or stock interest in other companies unless for retirement and cancellation, without notice to the Stock Exchange.

To publish statement of earnings monthly and annually.

To publish once in each year and submit to the stockholders, at least fifteen days in advance of the annual meeting of the Corporation, a statement of its financial condition, a consolidated income account covering the previous fiscal year; and a consolidated balance sheet showing assets and liabilities at the end of the year; or an income account

(Testimony of M. J. Curry.)

and balance sheet of the parent company and all constituent, subsidiary, owner or controlled companies, subject to I. C. C. regulations.

To maintain, in accordance with the rules of the Stock Exchange, a transfer office or agency in the Borough of Manhattan, City of New York, where all listed securities shall be directly transferable, and the principal of all listed securities with interest or dividends thereon shall be payable; also a registry office in the Borough of Manhattan, City of New York, other than its transfer office or agency in said city, where all listed securities shall be registered.

To notify the Stock Exchange thirty days in advance of the effective date of any change in the authorized amounts of listed securities.

Not to make any change in listed securities or of a trustee of its bonds or other securities, without the approval of the Committee on Stock List, and not to select as a trustee an officer or director of the Company.

To notify the Stock Exchange in the event of the issuance or creation in any form or manner of any rights to subscribe to, or to be allotted, its securities, or of any other rights or benefits pertaining to ownership in its listed securities, so as to afford the holders of its listed securities a proper period within which to record their interests, and that all such rights to subscribe or to receive allotments and all other such rights and benefits shall be transferable; and shall be transferable, payable and deliverable.

(Testimony of M. J. Curry.)

erale in the Borough of Manhattan, City of New York.

To notify the Stock Exchange of the issuance of additional amounts of listed securities; and make immediate application for the listing thereof.

To publish promptly to holders of listed bonds and stocks any action in respect to interest on bonds, dividends on shares, or allotment of rights for subscription to securities, notices thereof to be sent to the Stock Exchange, and to give to the Stock Exchange at least ten days' notice in advance of the closing of the transfer books or extensions, or the taking of a record of holders for any purpose.

To redeem Preferred Stock in accordance with the requirements.

To notify the Stock Exchange if deposited collateral is changed or removed.

To have on hand at all times a sufficient supply of bonds to meet the demands for transfer.

General

The fiscal year of the Railroad Company ends on the 31st day of December.

The principal office of the Company is in the Mills Building, San Francisco, California.

The annual meeting of stockholders is held on the last Wednesday in March at the principal office of the Railroad Company in San Francisco, California.

The names and addresses of the Directors, whose terms expire March 30, 1927, are: Arthur Curtiss

(Testimony of M. J. Carry.)

James, Thomas M. Schumacher, Alvin W. Kreeh and Winthrop W. Aldrich, of New York, N. Y.; C. M. Levey, William Fries, J. G. Hooper, Campbell McGregor, R. R. Pardow, Wellington T. Smith, F. M. Angellotti and A. R. Baldwin, of San Francisco, California; John L. Nagle, of Sacramento, California; Thomas F. Baxter, of Stockton, California; Andrew M. Hunt, of San Francisco, California; Hale Holden and James E. Gorman, of Chicago, Illinois; E. W. Baldwin, of St. Louis, Missouri; and C. M. Nibley, of Salt Lake City, Utah.

The Executive Committee is: Arthur Curtiss James, A. W. Kreeh, Winthrop W. Aldrich and Thomas M. Schumacher, Chairman, and C. M. Levey, President ex-officio.

The Officers of the Railroad Company are: Chairman of the Executive Committee, Thomas M. Schumacher; Chairman of the Board, A. W. Kreeh; President, C. M. Levey; Vice-Presidents, F. W. M. Cutcheon, E. W. Mason, and Charles Elsey; Secretary, W. G. Bruen; Treasurer, Charles Elsey; Assistant Secretary and Assistant Treasurer, S. C. Matthews.

The bonds may be transferred and registered at The Equitable Trust Company of New York, 37 Wall Street, New York, N. Y.

The Agent for the payment of interest is The Equitable Trust Company of New York.

The places for the payment of the principal are at the office of The Equitable Trust Company of

(Testimony of M. J. Curry:)

New York, or of the Crocker First Federal Trust Company of San Francisco, California.

THE WESTERN PACIFIC
RAILROAD COMPANY,

By S. C. MATTHEWS,

Assistant Secretary.

This Committee recommends that the above-mentioned \$2,600,000 First Mortgage Five per Cent. Gold Bonds, Series A, due March 1, 1946, Nos. M27327 to M29926, inclusive, for \$1,000 each (and registered bonds issued in exchange for coupon bonds) be added to the list, on official notice of issuance and distribution for sale to the public, in accordance with the terms of this application, making the total amounts authorized to be listed

\$30,780,000 Series A Bonds, and

3,000,000 Series B Bonds.

ROBERT GIBSON,

Chairman.

Adopted by the Governing Committee, October 15, 1926.

E. V. D. COX,

Secretary.

[Endorsed]: United States District Court. No. 26591 Western Pac. R. R. Co. vs. Irving Trust Co. Exhibit No. 7 Filed 1/22/1940. Walter B. Maling, Clerk

Mr. McCollum: I should like to offer the statement of October 31, 1927 as Irving Trust Company Exhibit 8.

(The document was marked "Irving Trust Company's Exhibit 8.")

(Testimony of M. J. Curry.)

IRVING TRUST CO. EXHIBIT NO. 8

Francis E. Fitch (Inc.), 138 Pearl St., New York.

A-7722

COMMITTEE ON STOCK LIST,
NEW YORK STOCK EXCHANGEThe Western Pacific Railroad Company
(Organized under the laws of California)(Controlled by stock ownership by The Western
Pacific Railroad Corporation of Delaware)

First Mortgage Five Per Cent. Gold Bonds,

Series A, Due March 1, 1946

Additional listing, Series A Bonds..... \$2,950,000

Authorized First Mortgage Bonds..... 50,000,000

Amount issued:

Series A, 5% Bonds..... 30,780,000

Series B, 6% Bonds..... 3,000,000

(All this issue surrendered for cancel-
lation or redeemed as of September
1, 1927.—See *infra*)

Total listing applied for:

Series A 33,730,000

This additional issue:

Indenture authorized by Stockholders July 13, 1916

Authorized by Board of Directors..... Mar. 2, 1927

Approved by Interstate Commerce Com-

mission by its orders..... Mar. 29, 1927

and Sept. 2, 1927

I. C. C. Finance Docket No. 6183. No-

other authority necessary.

(Testimony of M. J. Curry.)

CAPITAL SECURITIES

STOCK	Classes:	Par Value	Number of Shares		
			Authorized by Charter	Authorized for Issuance	Previously Listed or Authorized to be Listed
	Preferred	\$100	275,000	275,000	275,000
	Common	100	475,000	475,000	475,000
BONDS					
	Mortgage Bonds:		Amount Authorized	Previously Listed or Authorized to be Listed	Outstanding
	First Mortgage, due Mar. 1, 1946.				
	Series "A"	5%			
	Series "B"	6%			
	Equipment Trust Obligations:				
	Titles and dates of maturity:				
	*Equipment Trust				
	Certificates	5 1/2%	5,600,000	5,600,000	4,100,000
	†Equipment Trust Certificates (Series C)	5 1/2%	3,105,000	3,105,000	2,484,000
	*Certificates in amount of \$375,000 payable March 1st of each year from 1924 to 1937, inclusive, and \$350,000 March 1, 1938.				
	†Certificates in amount of \$207,000 payable December 1st of each year from 1924 to 1938, inclusive.				

Total amount of First Mortgage Bonds authorized under Mortgage

\$50,000,000

\$33,730,000 \$30,780,000 \$33,274,300

None 3,000,000 None

None

None

5,600,000

3,105,000

5 1/2%

5 1/2%

March 1st of each year from 1924 to 1937, inclusive, and \$350,000 March 1, 1938.

December 1st of each year from 1924 to 1938, inclusive.

(Testimony of M. J. Curry.)

New York, October 31, 1927.

Referring to its previous applications, especially to A-7277, dated September 30, 1926, The Western Pacific Railroad Company (hereinafter called the "Railroad Company") hereby makes application for the listing on the New York Stock Exchange of \$2,950,000 additional (of a total authorized issue of \$50,000,000) of its First Mortgage Five per Cent. Gold Bonds, Series A, due March 1, 1946, consisting of Nos. M. 29942 to M-32877, both inclusive, for \$1,000 each, of Nos. D-1074 to D-1103, both inclusive, for \$500 each, and of Nos. C-5375 to C-5394, both inclusive for \$100 each (and such fully registered bonds as may be issued in exchange for coupon bonds), on official notice of issuance and distribution for sale to the public, making the total amount of Series A Bonds issued and applied for \$33,730,000. The \$3,000,000 Series B Bonds issued and listed have all been surrendered to the Trustees under the mortgage for cancellation or redeemed, all as of September 1, 1927. (See *Infra*).

Authority

The issuance of said \$2,950,000 Series A Bonds of the Railroad Company, covered by this application, was authorized by resolutions of the Board of Directors of the Railroad Company adopted March 2, 1927, and their authentication was authorized by a further resolution adopted by the Board of Directors on May 10, 1927. No action by the

(Testimony of M. J. Curry.)

stockholders of the Railroad Company is required by the provisions of the First Mortgage of the Railroad Company, dated June 26, 1916, hereinafter mentioned, or by any laws or regulations applicable to the issuance and sale of any bonds secured by said First Mortgage. The issuance and sale and/or exchange of said \$2,950,000 Series A Bonds at not less than ninety-nine and one-half per cent. of their face amount and accrued interest and for the purposes hereinafter stated were approved by orders of the Interstate Commerce Commission, dated March 29, 1927 and September 2, 1927, in Finance Docket No. 6183. No further authority is required.

All of said outstanding Series B Six per Cent. Bonds were duly called for redemption as of September 1, 1927. Under the authorization therefor given by the aforesaid resolutions of the Board of Directors of Railroad Company and the aforesaid orders of the Interstate Commerce Commission, holders of \$271,500 face amount of said Series B Bonds elected to receive in lieu of the redemption price of such bonds, Series A Five per Cent. Bonds of said new \$2,950,000 issue of the same face amount (\$271,500) together with a cash premium of three per cent. and accordingly \$271,500 face amount of said Series A Bonds were, on September 1, 1927, delivered to effectuate said exchange, and the said \$271,500 face amount of said Series B Six per Cent. Bonds received in exchange therefor were thereupon delivered by Railroad Company to the Trustees

(Testimony of M. J. Curry.)

under its First Mortgage of June 26, 1916, for cancellation, and were cancelled.

Purpose of Issue

The purpose of the issue of said bonds was to provide for the substitution of the same for all of the Series B Six per Cent. Bonds of the Railroad Company outstanding, the same then being of the aggregate face amount of \$2,950,000.

Description

The First Mortgage Bonds are secured by the Railroad Company's First Mortgage, dated June 26, 1916, to First Federal Trust Company (now Crocker First Federal Trust Company) of San Francisco, California, and Henry E. Cooper (37 Wall Street, New York City), Trustees. The Bonds covered by this application are an additional issue of Series A Bonds of \$2,950,000 principal amount, all bearing interest at the rate of five per cent. per annum, dated June 26, 1916, and maturing March 1, 1946.

The principal of the bonds is payable at the office or agency of the Railroad Company in the Borough of Manhattan, City of New York, N. Y., and the interest thereon is payable at its said office or agency, or at the option of the holder at its office or agency in the City and County of San Francisco, semi-annually, on March 1st and September 1st. Both principal of and interest upon each bond are payable in gold coin of the United States of Ameri-

(Testimony of M. J. Curry.)

ca of or equal to the standard of weight and fineness as it existed June 26, 1916, without deduction for any tax, assessment or other governmental charge (except the Federal Income Tax imposed by the Act of Congress approved October 3, 1913, with respect to income derived from interest paid thereon), which the Railroad Company or the Trustees under the mortgage securing the bonds, or either of them may be required to pay thereon or to retain therefrom under any present or future law or ordinance of the United States of America, or of any State, Territory, Municipality, or other taxing authority therein; and the Railroad Company assumes the payment of all such taxes, assessments and charges with the exception aforesaid.

The Bonds are in coupon form of the denominations of \$1,000, and \$500 and \$100 and are registerable as to principal only. Coupon bonds for \$1,000 are interchangeable with registered bonds of the denominations of \$1,000, \$5,000 and \$10,000, or multiples of \$10,000. Coupon bonds for \$1,000, \$500 and \$100 are also interchangeable in equal principal amounts. For any such exchange and for any transfer of registered bonds or of coupon bonds registered as to principal, the Company, at its option, may require the payment of a sum sufficient to reimburse it for any stamp tax or other governmental charge and except in case of coupon bonds registered as to principal an additional amount not exceeding \$1 for each new bond issued upon such exchange or transfer.

(Testimony of M. J. Curry.)

Sinking Fund

The Mortgage securing the bonds provides for the creation of a sinking fund, to be especially applied to the purchase or redemption of bonds, and requires the Railroad Company for that purpose to pay, out of any income lawfully applicable thereto, after payment of operating expenses of every description, taxes and interest upon the bonds, the sum of \$50,000 on January 1st of each year, commencing with the year 1919. Series A Bonds are redeemable through the sinking fund at par and accrued interest on at least sixty days' previous published notice, as described under redemption. All bonds purchased or redeemed by the sinking fund are to be cancelled and delivered to the Railroad Company. These provisions have been fully complied with.

Redemption

The Railroad Company may redeem all or any part of said Series A Bonds on any semi-annual interest payment date, at par and accrued interest, on notice published once in each calendar week for eight successive weeks in two newspapers of general circulation published in the Borough of Manhattan, New York, N. Y., and one newspaper of general circulation published in San Francisco, California, one such publication to be not less than sixty nor more than ninety days before the date of redemption. The Company may elect to redeem the bonds of one or more series. Serial numbers of

(Testimony of M. J. Curry.)

bonds drawn by lot for redemption are required to be stated in publications of notice of redemption.

All bonds redeemed are to be cancelled or indelibly stamped with a statement that they have been redeemed. In the case, however, of bonds hereafter refunded with, or exchanged for, or the payment, redemption or retirement otherwise whereof shall be provided for by means of, refunding bonds or other obligations of the Railroad Company issued under a mortgage or other instrument providing that bonds redeemed pursuant to the provisions of the First Mortgage, notwithstanding that they shall have been cancelled or marked "Cancelled," shall be deposited with the Trustees under such new mortgage or other instrument, as security for such refunding bonds or other obligations, the bonds so redeemed and deposited shall be deemed to remain alive and unextinguished in the hands of the Trustees under such new mortgage or other instrument for the security of such refunding bonds or other obligations, to the extent specified in section 2 of Article Third of the Mortgage.

Default

The Mortgage provides that in case of default in the payment of interest continuing for the period of three months or default in the payment of principal, or in the observance or performance of any covenants, conditions or agreements on the part of the Railroad Company in the bonds or in

(Testimony of M. J. Curry.)

the Mortgage contained continuing for the period of three months after written notice from the Trustees, or in case an order be made for the appointment of a Receiver, the Trustee may, and upon the written request of the holders of twenty-five per cent. in amount of the bonds then outstanding shall, by notice in writing, declare the principal of all of the outstanding bonds to be due and payable immediately. The mortgage provides that the holders of a majority in amount of the bonds then outstanding may waive any default that shall have happened and its consequences upon the remedying of such default. It gives the holders of a majority in amount of bonds outstanding the right to direct and to control the action of the Trustees, and the exercise of the remedies provided by the Mortgage.

Additional Bonds

The mortgage provides, subject to the limitation that the aggregate amount of bonds outstanding shall not exceed fifty million dollars, for the issuance of additional bonds to pay, or reimburse the Railroad Company for, the cost of the construction or purchase of extensions to or additional lines of railroad and for the betterment, improvement and equipment of the railroads and other property owned by the Railroad Company or its subsidiary companies and subject to the lien of the mortgage, or securities representing the same, at the rate of one thousand dollars principal amount of bonds for

(Testimony of M. J. Curry.)

each one thousand dollars of authorized expenditures for the purposes aforesaid, or liabilities incurred therefor. The mortgage also provides for the issuance of bonds sold for cash, against the deposit of the net cash proceeds with the Mortgage Trustees, subject to being withdrawn by the Railroad Company for the purposes above stated to the extent of the net proceeds of each one thousand dollars principal amount of bonds so sold for each one thousand dollars principal amount of bonds which might have been authenticated against such expenditures or liabilities.

The mortgage also provides that bonds of any series outstanding may be replaced by bonds of another series to a like aggregate principal amount, either upon surrender of the outstanding series for cancellation or upon redemption thereof. The mortgage further provides for the issuance of new bonds to replace bonds mutilated, lost or destroyed upon proper proof and satisfactory indemnity.

Changes in Capitalization

Since June 30, 1926 (the date as of which the consolidated balance sheet contained in said previous application A-7277 was made) there has been no change in the amount of Capital Stock or funded debt of the Railroad Company authorized and outstanding except

First: The issuance of the \$2,600,000 of Series A 5% Bonds covered by said application A-7277, and

(Testimony of M. J. Curry.)

Second: The purchase of \$50,100 face amount of the Series "A" 5% Bonds, for the sinking fund (making the total amount so purchased \$505,700); and

Third: The retirement by surrender and cancellation, and by redemption as aforesaid of \$2,950,000 face amount of Series B Six per Cent. Bonds on September 1, 1927, being all of the Series "B" Six per Cent. Bonds outstanding on said date; and

Fourth: The retirement of \$375,000 (face amount) of its 5½% Equipment Trust Certificates, Series "B" and \$207,000 (face amount) of its 5½% Equipment Trust Certificates Series "C."

Properties

The properties of the Railroad Company are described in the original application for listing of Series "A" Bonds, No. A-4747, dated March 13, 1917, and in the subsequent applications Nos. A-5478, dated June 30, 1921; A-5667, dated May 10, 1922; A-6800, dated July 16, 1925; and A-7277, dated September 30, 1926.

Since June 30, 1926, the following important changes in mileage have occurred:

Completion of 9.53 miles additional main line yard, industry and side tracks, the operation of which commenced on various dates between July 1, 1926 and June 30, 1927.

(Testimony of M. J. Curry.)

Completion of .57 miles additional branch line side and spur tracks, the operation of which commenced on various dates between July 1, 1926 and June 30, 1927.

Acquisition of joint interest with other carriers in .04 miles of yard tracks, operation of which commenced on various dates between July 1, 1926 and June 30, 1927.

Since June 30, 1926, the Railroad Company has made the following net additions to equipment:

Freight train cars:

Stock	1
Refrigerator	4
Other freight train	100
Caboose	8

Construction and maintenance equipment:

Officer's car	1
Dump cars	30
Outfit cars	4
Spreader car	1

Total 149

Less cars destroyed and converted:

Automobile	3
Box	15
Flat	5
Stock	8
Coal	1
Refrigerator	6
Caboose	1

Construction and maintenance equipment

Outfit car	1
------------------	---

Total 35

Total units added June 30, 1926, to June 30, 1927 114

(Testimony of M. J. Curry.)

Lien

Reference is made to the previous listing applications, Nos. A-4747, A-5478, A-5667, A-6800 and A-7277, for a description of the property subject to the lien of the Mortgage prior to July 1, 1926. The property on which the Mortgage constitutes a first lien includes the following:

Mileage:	Miles
Main line mileage, San Francisco to Salt Lake City.....	926.41
Branch lines, main track.....	115.98
Second main track.....	3.12
Yard tracks and sidings, etc.....	283.33
Total track miles.....	1,328.84
Equipment:	
Locomotives.....	144
Passenger cars.....	9
Freight cars.....	5,962
Service cars.....	371
Floating equipment.....	5
Total.....	6,491

The foregoing equipment does not include additional unmortgaged equipment covered by Equipment Trust Agreements, Series B and Series C, as follows:

Locomotives.....	16
Passenger cars.....	48
Freight cars.....	3,264
Service cars.....	1

Securities:

1,000 shares Capital Stock (50% of outstanding) of The Salt Lake City Union Depot and Railroad Company, operating the passenger terminal at Salt Lake City, leased to the Railroad Company and the Denver and Rio Grande Western Railroad Company.

(Testimony of M. J. Curry.)

4,500 shares of the Capital Stock (entire issue) of the Deep Creek Railroad Company, operating a line of railroad in Western Utah, 46 miles.

4,005 shares of the Capital Stock (entire issue) of Standard Realty and Development Company, organized to acquire and hold real estate in connection with the construction of the Railroad Company.

10,000 shares of the Capital Stock (entire issue) of Sacramento Northern Railway, operating 165.65 miles of main line of railroad in California.

\$5,196,204.46 par value First Mortgage 5% Twenty-Year Gold Bonds and Bond Participation Certificates of Sacramento Northern Railroad.

Deposited cash in the hands of Mortgage Trustees, as of
June 30, 1927 \$438,652.70

The First Mortgage contains a provision subjecting to its lien after acquired property purchased with bonds or their proceeds and property directly appurtenant to or forming an integral part of the mortgaged railroad, or securities representing the same, also additional securities of subsidiary companies as defined in the Mortgage, but the First Mortgage permits the Railroad Company to acquire with free funds, free from the lien of the Mortgage, additional lines of railroad, branches and extension, equipment and securities.

From July 1, 1926 to June 30, 1927, inclusive, the Railroad Company has expended for road and equipment (including the above described additional equipment) the following amounts:

Road and structures and general expenses.....	\$966,922.84
Equipment	503,175.05
Total	<u>\$1,470,097.89</u>

(Testimony of M. J. Curry.)

Dividends

All of the authorized Capital Stock, consisting of \$47,500,000 par value of Common Stock and \$27,500,000-par value of Preferred Stock, is issued and outstanding, and all of such stock except Directors' qualifying shares of Common Stock is held by The Western Pacific Railroad Corporation, a Delaware corporation.

The following dividends have been paid on the Preferred and Common Stocks since 1922:

DIVIDENDS—PREFERRED STOCK

Year	Rate	Amount paid
1923	6%	\$1,650,000
1924	6%	1,650,000
1925	7.558%	2,078,450
1926	6%	1,650,000
1927 (to June 30)	1½%	412,500

DIVIDENDS—COMMON STOCK

Year	Rate	Amount paid
1925	5%	\$2,374,970

Prior to 1925, Railroad Company, paid no dividends on its Common Stock.

Financial Statements

There follow statements:

(1) The Western Pacific Railroad Company and subsidiary companies Consolidated Income Account for year ending December 31, 1926 and six months ended June 30, 1927;

(Testimony of M. J. Curry.)

(2) The Western Pacific Railroad Company and subsidiary companies Analysis of Surplus Account Changes, December 31, 1925 to June 30, 1927;

(3) The Western Pacific Railroad Company and subsidiary companies Consolidated General Balance Sheet, December 31, 1926 and June 30, 1927;

(4) Capital Stock of subsidiary companies outstanding and amount owned by The Western Pacific Railroad Company;

(5) Excess of par over book value of stocks and bonds of affiliated companies of The Western Pacific Railroad Company as of June 30, 1927.

THE WESTERN PACIFIC RAILROAD COMPANY AND SUBSIDIARY COMPANIES CONSOLIDATED INCOME ACCOUNT FOR YEAR ENDED DECEMBER 31, 1926, AND SIX MONTHS ENDED JUNE 30, 1927.

	Year Ended Dec. 31, 1926	Six Months Ended June 30, 1927
Freight revenue	\$14,259,753.89	\$6,097,064.76
Passenger revenue	2,258,931.38	952,048.11
Mail and express revenue	431,612.73	200,851.97
Miscellaneous revenue	1,006,792.29	303,958.87
Total revenue	\$17,957,090.29	\$7,553,923.71
Expenses operating	\$12,640,421.80	\$6,681,825.66
Taxes	1,432,108.68	816,088.87
Uncollectible railway revenues	1,707.69	558.59
Operating income	\$3,882,852.12	\$55,450.39

(Testimony of M. J. Curry.)

Other income:

Rental of property	\$529,199.25	\$276,232.53
Hire of equipment, receipts	1,625,908.13	670,728.63
Dividend income	7,720.00	230.00
Income from funded securities	5,034.95	9,246.49
Income from unfunded securities and accounts	91,649.33	43,009.57
Miscellaneous income	345.79	146.45
Gross income	<u>\$6,142,709.57</u>	<u>\$1,055,044.26</u>

Income deductions:

Interest on funded debt, First Mortgage Bonds	\$1,563,625.52	\$855,276.27
Interest on funded debt, Equipment Notes	396,618.91	182,878.40
Interest on funded debt, advances	114,507.64	27,027.85
Rental of leased property	212,263.56	99,517.05
Hire of equipment, payments	1,011,393.63	373,617.23
Miscellaneous deductions	29,196.15	14,518.16
Amortization of discount on funded debt	130,159.18	64,557.15
Total deductions	<u>\$3,457,764.59</u>	<u>\$1,617,392.11</u>
Net income	<u>\$2,684,944.98</u>	<u>†\$562,347.85</u>

(†) Denotes red figures.

*Corresponding figure for the six months ended June 30th, 1926, was \$468,502.66.

THE WESTERN PACIFIC RAILROAD COMPANY AND SUBSIDIARY
COMPANIES ANALYSIS OF SURPLUS ACCOUNT CHANGES
—DECEMBER 31, 1925, TO JUNE 30, 1927.

	Year Ending Dec. 31, 1926	Six Months Ending June 30, 1927	Consolidated Total
Net income	\$2,684,944.98	\$562,347.85†	\$2,122,597.13
Add: Net miscellaneous credits	15,292.88	1,337.04	16,629.92
Total	<u>\$2,700,237.86</u>	<u>\$561,010.81†</u>	<u>\$2,139,227.05</u>

(†) Denotes red figures.

Institutional Bondholders et al.

1393

(Testimony of M. J. Curry.)

Deduct:

Net miscellaneous debits.....	\$462.57	\$19,051.83	\$19,514.40
Dividends on Preferred			
Stock	1,650,000.00	412,500.00	2,062,500.00
Total deductions.....	\$1,650,462.57	\$431,551.83	\$2,082,014.40
Surplus—Increase.....	\$1,049,775.29	*\$992,562.64	\$57,212.65
Surplus credit balance—			
June 30, 1927.....	\$5,454,640.97		
Surplus credit balance—			
December 31, 1925.....	5,397,428.32		
Increase	\$57,212.65		

THE WESTERN PACIFIC RAILROAD COMPANY AND SUBSIDIARY COMPANIES CONSOLIDATED GENERAL BALANCE SHEET, DECEMBER 31, 1926, AND JUNE 30, 1927.

ASSETS

Dec. 31, 1926

June 30, 1927

Investments:

Investment in railroad and equipment.....	\$125,492,900.55	\$126,772,948.32
Investment in real estate and improve-		
ments	897,236.08	891,895.84
Sinking funds	50,532.26	5,635.26
Deposits in lieu of mortgage property		
sold	\$98,252.51	26,938.95
Miscellaneous physical property.....	726,223.34	939,969.03
Other investments.....	709,498.75	734,498.75
Total investments.....	\$127,974,643.49	\$129,371,886.15

Current assets:

Cash	\$2,608,865.56	\$1,427,490.68
Deposits of mortgage trust funds.....	768,452.63	438,652.70
Deposits of equipment trust funds.....	46,695.92	46,695.92
Special deposits	121,624.46	154,222.96

* Denotes red figures.

(Testimony of M. J. Curry.)

Traffic and car service balances receivable	395,775.41	427,209.33
Net balances receivable from agents and conductors	163,160.97	187,418.22
Miscellaneous accounts receivable	1,202,273.94	1,097,780.53
Material and supplies	2,118,382.19	2,691,212.70
Interest and dividends receivable	10,569.49	17,684.40
Other current assets	414.74	414.74
Total current assets	\$7,436,215.31	\$6,488,782.18
Deferred assets:		
Working fund advances	\$3,597.71	\$3,113.80
Total deferred assets	\$3,597.71	\$3,113.80
Unadjusted debits:		
Rents and insurance premiums paid in advance	\$50,250.57	31,652.95
Discount on funded debt	2,235,734.05	2,167,249.44
Other unadjusted debits	836,648.26	841,787.03
Total unadjusted debits	\$3,122,632.88	\$3,040,689.42
Total assets	\$138,537,089.39	\$138,904,471.55
Excess of par value over book value of Capital Stock and bonds of subsidiary companies	1,381,659.83	1,381,659.83
	<u>\$137,155,429.56</u>	<u>\$137,522,811.72</u>

LIABILITIES

	Dec. 31, 1926	June 30, 1927
Capital Stock:		
Common	\$47,528,814.00	\$47,528,814.00
Preferred	27,500,000.00	27,500,000.00
Premium on Capital Stock	498,238.00	498,238.00
Total stock	<u>\$75,527,052.00</u>	<u>\$75,527,052.00</u>

(Testimony of M. J. Curry.)

Long term debt:

Funded debt (First Mortgage Gold Bonds)	\$33,612,068.68	\$33,561,968.68
Funded debt (Equipment Trust Certificates)	6,959,000.00	6,584,000.00
Funded debt (notes payable)	50,000.00	50,000.00
Total long term debt	\$40,621,068.68	\$40,195,968.68

Debt to affiliated companies:

Open accounts	1,125,000.00	1,185,172.39
Total debt to affiliated companies	\$1,125,000.00	\$1,185,172.39

Current liabilities:

Loans and notes payable	\$145,000.00	\$145,000.00
Traffic and car service balances payable	307,920.48	403,589.24
Audited accounts and wages payable	713,655.31	1,849,609.59
Miscellaneous accounts payable	221,027.85	111,655.78
Interest matured unpaid	21,709.53	46,795.53
Unmatured interest accrued	628,709.47	656,416.05
Unmatured rents accrued	5,049.98	9,962.46
Other current liabilities	56,644.61	111,227.12
Total current liabilities	\$2,099,717.23	\$3,304,255.77

Deferred liabilities:

Other deferred liabilities	68,614.69	18,003.09
Total deferred liabilities	\$68,614.69	\$18,003.09

Unadjusted credits:

Tax liability	\$167,657.51	\$289,292.37
Accrued depreciation—Equipment	3,651,852.44	4,046,467.18
Other unadjusted credits	264,588.97	330,402.48
Surplus—Investment, equipment and other property purchased	7,172,674.45	7,171,556.79
Total unadjusted credits	\$11,266,773.35	\$11,837,718.82

(Testimony of M. J. Curry.)

Surplus:

Additions to property through income and surplus.....	4,572,467.65	4,943,662.58
Funded debt retired through income and surplus.....	399,856.73	449,928.73
Sinking fund reserves.....	260,447.76	222,548.26
Profit and loss balance.....	1,214,431.47	*161,498.60
Total surplus.....	\$6,447,203.61	\$5,454,640.97
Total liabilities.....	\$137,155,429.56	\$137,522,811.72

THE WESTERN PACIFIC RAILROAD COMPANY CAPITAL STOCK OF SUBSIDIARY COMPANIES OUTSTANDING AND AMOUNT OWNED BY THE WESTERN PACIFIC RAILROAD COMPANY

	Par value Capital Stock outstanding	Percentage owned by Western Pacific	Par value owned by Western Pacific
Issuing company:			
Tidewater Southern Railway Company.....	\$1,176,782.00	97.55%	\$1,147,968.00
Deep Creek Railroad Company.....	450,000.00	100%	450,000.00
Sacramento Northern Railway.....	1,000,000.00	100%	1,000,000.00
Standard Realty and Development Company.....	400,500.00	100%	400,500.00
Western Refrigerator Line.....	15,000.00	100%	15,000.00

EXCESS OF PAR OVER BOOK VALUE OF STOCKS AND BONDS OF AFFILIATED COMPANIES AS OF JUNE 30, 1927

	Book value	Par value	Excess of par over book value
The Western Pacific Railroad Company:			
Capital Stock:			
Standard Realty & Development Co.....	\$175,439.78	\$400,500.00	\$225,060.22
Tidewater Southern Railway Company.....	1,223,848.94	1,147,968.00	*75,880.94

*Denotes red figures.

(Testimony of M. J. Curry.)

First Mortgage Bonds:

Sacramento Northern

Railroad	3,963,723.91	5,196,204.46	1,232,480.55
Total	<u>\$5,363,012.63</u>	<u>\$6,744,672.46</u>	<u>\$1,381,659.83</u>

THE WESTERN PACIFIC RAILROAD COMPANY AND SUBSIDIARY COMPANIES. STATEMENT OF FUNDED DEBT AS OF JUNE 30, 1927.

The Western Pacific Railroad Company First Mortgage Gold Bonds maturing March 1, 1946:

Issued June 26, 1916, Series A, 5%	\$19,628,300.00
Issued May 31, 1921, Series A, 5%	4,096,000.00
Issued February 15, 1922, Series B, 6	2,950,000.00
Issued April 24, 1925, Series A, 5%	4,000,000.00
Issued December 1 and 31, 1926 Series A, 5%	2,600,000.00

Total amount outstanding June 30, 1927

\$33,274,300.00

The Western Pacific Railroad Company 5½% Equipment Trust Certificates Series "B":

Total amount issued February 21, 1923	\$5,600,000.00
Par value maturing serially on the first day of March in each year from 1924 to 1937 inclusive	375,000.00
Par value maturing on March 1, 1938	350,000.00

Total amount outstanding June 30, 1927

4,100,000.00

The Western Pacific Railroad Company 5½% Equipment Trust Certificates Series "C":

Total amount issued March 10, 1924	\$3,105,000.00
Par value maturing serially on the first day of December in each year from 1924 to 1938 inclusive	207,000.00

Total amount outstanding June 30, 1927

2,484,000.00

(Testimony of M. J. Curry.)

Tidewater Southern Railway Company, First Mortgage
 ° Thirty-Year Five Per Cent Gold Bonds maturing
 April 15, 1942, issued April 15, 1912:

Total amount outstanding June 30, 1927..... 259,500.00

Sacramento Northern Railroad First Mortgage Twenty-Year Five Per Cent Gold Bonds issued July 1, 1918, and maturing July 1, 1938, payment of which has been assumed by Sacramento Northern Railway (subsidiary of Railroad Company) the successor in ownership of all the property of the Sacramento Northern Railroad:

Total amount outstanding June 30, 1927 \$5,224,373.14

Less amount owned by The Western Pacific Railroad Company and pledged under its said First Mortgage..... 5,196,204.46

28,168.68

Amount of note of Bisbee Investment Company dated January 14, 1925, in favor of California Trust and Savings Bank, maturing in installments due on various dates up to October 1, 1934, secured by mortgage on union passenger station, property of Sacramento Northern Railway in the City of Sacramento, which property was acquired by said Railway subject to said mortgage; which must be paid by Sacramento Northern Railway, outstanding on June 30, 1927.....

50,000.00

Policy as to Depreciation

No specific amount is set aside either monthly or annually on account of depreciation of roadway or structures, but all such property is fully maintained and when retired or replaced is written off out of capital account.

With respect to equipment, charges are made monthly to operating expenses and corresponding

(Testimony of M. J. Curry.)

amounts credited to "Accrued depreciation equipment," at a general rate of 3% per annum on the original cost of the equipment.

Agreements

The Western Pacific Railroad Company agrees with the New York Stock Exchange as follows:

Not to dispose of an integral asset or its stock interest in any constituent, subsidiary, owned or controlled company, or allow any of said constituent, subsidiary, owned or controlled companies to dispose of an integral asset or stock interest in other companies unless for retirement and cancellation, without notice to the Stock Exchange.

To publish statement of earnings monthly.

To publish once in each year and submit to the stockholders, at least fifteen days in advance of the annual meeting of the Corporation, a statement of its financial condition; a consolidated income account covering the previous fiscal year; and a consolidated balance sheet showing assets and liabilities at the end of the year; or an income account and balance sheet of the parent company and all constituent, subsidiary, owned or controlled companies, subject to I. C. C. regulations.

To maintain, in accordance with the rules of the Stock Exchange, a transfer office or agency in the Borough of Manhattan, City of New York, where all listed securities shall be directly transferable, and the principal of all listed securities with inter-

(Testimony of M. J. Curry.)

est or dividends thereon shall be payable; also a registry office in the Borough of Manhattan, City of New York, other than its transfer office or agency in said city, where all listed securities shall be registered.

To notify the Stock Exchange thirty days in advance of the effective date of any change in the authorized amounts of listed securities.

Not to make any change in listed securities or of a trustee of its bonds or other securities, without the approval of the Committee on Stock List, and not to select as a trustee an officer or director of the Company.

To notify the Stock Exchange in the event of the issuance or creation in any form or manner of any rights to subscribe to, or to be allotted, its securities, or of any other rights or benefits pertaining to ownership in its listed securities, so as to afford the holders of its listed securities a proper period within which to record their interests, and that all such rights to subscribe or to receive allotments and all other such rights and benefits shall be transferable; and shall be transferable, payable and deliverable in the Borough of Manhattan, City of New York.

To notify the Stock Exchange of the issuance of additional amounts of listed securities, and make immediate application for the listing thereof.

To publish promptly to holders of listed bonds and stocks any action in respect to interest on bonds, dividends on shares, or allotment of rights

(Testimony of M. J. Curry.)

for subscription to securities, notices thereof to be sent to the Stock Exchange, and to give to the Stock Exchange at least ten days' notice in advance of the closing of the transfer books or extensions, or the taking of a record of holders for any purpose.

To redeem Preferred Stock in accordance with the requirements.

To notify the Stock Exchange if deposited collateral is changed or removed.

To have on hand at all times a sufficient supply of bonds to meet the demands for transfer.

General

The fiscal year of the Railroad Company ends on the 31st day of December.

The principal office of the Company is in the Mills Building, San Francisco, California.

The annual meeting of stockholders is held on the last Wednesday in March at the principal office of the Railroad Company in San Francisco, California.

The names and addresses of the Directors, whose terms expire March 28, 1928 are: Arthur Curtiss James, Thomas M. Schumacher, Alvin W. Kreeb and Winthrop W. Aldrich, of New York, N. Y.; C. M. Levey, William Fries, J. G. Hooper, Campbell McGregor, Wellington T. Smith, W. L. Hughson, H. M. Adams, A. R. Baldwin and F. M. Angellotti, of San Francisco, California; John L. Nagle, of Sacramento, California; Charles Elsey of Oakland, California; Hale Holden and James

(Testimony of M. J. Curry.)

E. Gorman, of Chicago, Illinois; L. W. Baldwin, of St. Louis, Missouri; and C. M. Nibley, of Salt Lake City, Utah.

The Executive Committee is: Arthur Curtiss James, A. W. Krech, Winthrop W. Aldrich and Thomas M. Schumacher, Chairman, and H. M. Adams President ex-officio.

The Officers of the Railroad Company are: Chairman of the Board, Arthur Curtiss James; Chairman of the Executive Committee, Thomas M. Schumacher; President, H. M. Adams; Vice-Presidents, Charles Elsey, E. W. Mason, Eugene Fox and M. J. Curry; Secretary, W. G. Bruen; Treasurer, Charles Elsey; Assistant Secretary and Assistant Treasurer, M. J. Curry.

The bonds may be transferred and registered at The Equitable Trust Company of New York, 37 Wall Street, New York, N. Y.

The Agent for the payment of interest is The Equitable Trust Company of New York.

The places for the payment of the principal are at the office of The Equitable Trust Company of New York, or of the Crocker First Federal Trust Company of San Francisco, California.

THE WESTERN PACIFIC
RAILROAD COMPANY,
By M. J. CURRY,

Vice-President

This Committee recommends that the above-mentioned \$2,950,000 First Mortgage Five per Cent.

(Testimony of M. J. Curry.)

Gold Bonds, Series A, due March 1, 1946, included in Nos. M-29942 to M-32877 for \$1,000 each; D-1074 to D-1103 for \$500 each and C-5375 to C-5394 for \$100 each (and coupon bonds of one denomination issued in exchange for coupon bonds of other denominations and registered bonds issued in exchange for coupon bonds), be added to the list on official notice of issuance and distribution and sale to the public, in accordance with the terms of this application making the total amount authorized to be listed \$33,730,000.

ROBERT GIBSON,

Chairman.

Adopted by the Governing Committee, November 10, 1927.

E. V. D. COX,

Secretary.

[Endorsed]: United States District Court. No. 26591 Western Pac. R. R. Co. vs. Irving Trust Co. Exhibit No. 8 Filed 1/22/1940 Walter B. Maling, Clerk

Mr. McCollum: And the statement of May 16, 1929, as Irving Trust Company Exhibit 9.

(The document was marked "Irving Trust Company's Exhibit 9.")

(Testimony of M. J. Curry.)

IRVING TRUST CO. EXHIBIT NO. 9

Francis E. Fitch (Inc.), 138 Pearl St., New York.

A-8696

COMMITTEE ON STOCK LIST,
NEW YORK STOCK EXCHANGE

The Western Pacific Railroad Company

(Organized under the laws of California)

(Controlled by stock ownership by the Western
Pacific Railroad Corporation of Delaware)

First Mortgage Five Per Cent. Gold Bonds,

Series A, Due March 1, 1946

Additional listing, Series A Bonds..... \$5,000,000

Authorized First Mortgage Bonds..... 50,000,000

Amount issued:

Series A, 5% Bonds..... 38,730,000

Series B, 6% Bonds..... 3,000,000*

*All this issue surrendered for cancellation
or redeemed as of September 1, 1927.

Total listing applied for:

Series A 38,730,000

This additional issue:

Indenture authorized

by stockholders, July 13, 1916

Authorized by Board of Directors May 21, 1928

Approved by Interstate Commerce

Commission by its order..... Dec. 21, 1928

I. C. C. Finance Docket No. 7055.

No other authority necessary.

CAPITAL SECURITIES

Number of shares					
	Par value	Authorized by Charter	Authorized for issuance	Previously listed or authorized to be listed	Outstanding
Stock					
Classes:					
Preferred	\$100	400,000	283,000	None	275,000
Common	100	600,000	475,000	None	475,000
	Interest rate	Amount authorized*	Authorized for issuance	Previously listed or authorized to be listed	Outstanding
Mortgage Bonds					
First Mortgage, due Mar. 1, 1946:					
Series "A"	5%	\$50,000,000	\$39,302,800	\$33,730,000	\$38,174,300
Series "B"	6%	50,000,000	3,000,000	3,000,000	None
Equipment Trust obligations:					
Titles and dates of maturity:					
†Equipment Trust Certificates	5½%	5,600,000	5,600,000	No	3,350,000
†Equipment Trust Ctfs. (Series C)	5½%	3,105,000	3,105,000	No	2,070,000

*Total amount of First Mortgage Bonds authorized under Mortgage.

†Certificates in amount of \$375,000 payable March 1st of each year from 1924 to 1937, inclusive, and \$350,000 March 1, 1938.

‡Certificates in amount of \$207,000 payable December 1st of each year from 1924 to 1938, inclusive.

(Testimony of M. J. Curry.)

Institutional Bondholders et al.

1405

(Testimony of M. J. Curry.)

New York, N. Y., May 16, 1929.

Referring to its previous applications, especially to A-7722, dated October 31, 1927, The Western Pacific Railroad Company (hereinafter called the "Railroad Company") hereby makes application for the listing on the New York Exchange of \$5,000,000 additional (of a total authorized issue of \$50,000,000) of its First Mortgage Five per Cent. Gold Bonds, Series A, due March 1, 1946, consisting of Nos. M-32966 to M-37965 both inclusive, for \$1,000 each (and such fully registered bonds as may be issued in exchange for coupon bonds), on official notice of issuance and distribution for sale to the public, making the total amount of Series A Bonds issued and applied for \$38,730,000.

Authority

The issuance of said \$5,000,000 Series A Bonds of the Railroad Company, covered by this application, was authorized by resolutions of the Board of Directors of the Railroad Company adopted May 21, 1928, and their authentication was authorized by a resolution adopted by the Executive Committee on April 26, 1929. No action by the stockholders of the Railroad Company is required by the provisions of the First Mortgage of the Railroad Company, dated June 26, 1916, hereinafter mentioned, or by any laws or regulations applicable to the issuance and sale of any bonds secured by said First Mortgage. The issuance and sale of said \$5,000,000 Series

(Testimony of M. J. Curry.)

A Bonds at not less than 97½% of their face amount and accrued interest and for the purposes hereinafter stated was approved by order of the Interstate Commerce Commission, dated December 21, 1928, in Finance Docket No. 7055. No further authority is required. The Railroad Company has sold and delivered said bonds on April 26, 1929, for cash at the price of 97½% of their face amount, together with accrued interest thereon, and the proceeds have been applied to the purposes for which the bonds were issued.

Purpose of Issue

The purpose of the issue of said bonds was to provide proceeds to be applied to the reimbursement of the Railroad Company for expenditures and for the cost of certain proposed construction, completion, extension and improvement of facilities and for the acquisition of equipment; all of such expenditures made or proposed to be made having been of a character with respect to which bonds may be issued and the proceeds of bonds paid out under the terms of Section 2 of Article Second of said First Mortgage, and having been set forth in detail in the application of the Railroad Company to the Interstate Commerce Commission upon which the above-mentioned order of December 31, 1928, was based.

Description

The First Mortgage Bonds are secured by the Railroad Company's First Mortgage, dated June

(Testimony of M. J. Curry.)

26, 1916, to First Federal Trust Company (now Crocker First Federal Trust Company of San Francisco, California), and Henry E. Cooper (37 Wall Street, New York City), Trustees. The bonds covered by this application are an additional issue of Series A Bonds of \$5,000,000 principal amount, all bearing interest at the rate of five per cent. per annum, dated June 26, 1916, and maturing March 1, 1946.

The principal of the bonds is payable at the office or agency of the Railroad Company in the Borough of Manhattan, City of New York, N. Y., and the interest thereon is payable at its said office or agency, or at the option of the holder at its office or agency in the City and County of San Francisco, semi-annually, on March 1st and September 1st. Both principal of and interest upon each bond are payable in gold coin of the United States of America of or equal to the standard of weight and fineness as it existed June 26, 1916, without deduction for any tax, assessment or other governmental charge (except the Federal Income Tax imposed by the Act of Congress approved October 3, 1913, with respect to income derived from interest paid thereon), which the Railroad Company or the Trustees under the mortgage securing the bonds, or either of them may be required to pay thereon or to retain therefrom under any present or future law or ordinance of the United States of America, or of any State, territory, municipality, or other

(Testimony of M. J. Curry.)

taxing authority therein; and the Railroad Company assumes the payment of all such taxes, assessments and charges with the exception aforesaid.

The bonds are in coupon form of the denominations of \$1,000, and \$500 and \$100 and are registerable as to principal only. Coupon bonds for \$1,000 are interchangeable with registered bonds of the denominations of \$1,000, \$5,000 and \$10,000, or multiples of \$10,000. Coupon bonds for \$1,000, \$500 and \$100 are also interchangeable in equal principal amounts. For any such exchange and for any transfer of registered bonds or of coupon bonds registered as to principal, the Company, at its option, may require the payment of a sum sufficient to reimburse it for any stamp tax or other governmental charge and except in case of coupon bonds registered as to principal an additional amount not exceeding \$1 for each new bond issued upon such exchange or transfer.

Sinking Fund

The Mortgage securing the bonds provides for the creation of a sinking fund, to be especially applied to the purchase or redemption of bonds, and requires the Railroad Company for that purpose to pay, out of any income lawfully applicable thereto, after payment of operating expenses of every description, taxes and interest upon the bonds, the sum of \$50,000 on January 1st of each year, commencing with the year 1919. Series A bonds are redeemable through the sinking fund at par and

(Testimony of M. J. Curry.)

accrued interest on at least sixty days' previous published notice, as described under redemption. All bonds purchased or redeemed by the sinking fund are to be cancelled and delivered to the Railroad Company. These provisions have been fully complied with.

Redemption

The Railroad Company may redeem all or any part of said Series A Bonds on any semi-annual interest payment date, at par and accrued interest, on notice published once in each calendar week for eight successive weeks, in two newspapers of general circulation published in the Borough of Manhattan, New York, N. Y., and one newspaper of general circulation published in San Francisco, Cal., one such publication to be not less than sixty nor more than ninety days before the date of redemption. The Company may elect to redeem the bonds of one or more series. Serial numbers of bonds drawn by lot for redemption are required to be stated in publications of notice of redemption.

All bonds redeemed are to be cancelled or indelibly stamped with a statement that they have been redeemed. In the case, however, of bonds hereafter refunded with, or exchanged for, or the payment, redemption or retirement otherwise whereof shall be provided for by means of, refunding bonds or other obligations of the Railroad Company issued under a mortgage or other instrument providing that bonds redeemed pursuant to the provisions of the First Mortgage, notwithstanding that they shall

(Testimony of M. J. Curry.)

have been cancelled or marked "Cancelled," shall be deposited with the Trustees under such new mortgage or other instrument, as security for such refunding bonds or other obligations, the bonds so redeemed and deposited shall be deemed to remain alive and unextinguished in the hands of the Trustees under such new mortgage or other instrument for the security of such refunding bonds or other obligations, to the extent specified in Section 2 of **Article Third of the Mortgage.**

Default

The Mortgage provides that in case of default in the payment of interest continuing for the period of three months or default in the payment of principal, or in the observance or performance of any covenants, conditions or agreements on the part of the Railroad Company in the bonds or in the Mortgage contained continuing for the period of three months after written notice from the Trustees, or in case an order be made for the appointment of a Receiver, the Trustees may, and upon the written request of the holders of twenty-five per cent. in amount of the bonds then outstanding shall, by notice in writing, declare the principal of all of the outstanding bonds to be due and payable immediately. The mortgage provides that the holders of a majority in amount of the bonds then outstanding may waive any default that shall have happened and its consequences upon the remedying of such default. It gives the holders of a ma-

(Testimony of M. J. Curry.)

majority in amount of bonds outstanding the right to direct and to control the action of the Trustees, and the exercise of the remedies provided by the mortgage.

Additional Bonds

The mortgage provides, subject to the limitation that the aggregate amount of bonds outstanding shall not exceed fifty million dollars, for the issuance of additional bonds to pay, or reimburse the Railroad Company for, the cost of the construction or purchase of extensions to or additional lines of railroad and for the betterment, improvement and equipment of the railroads and other property owned by the Railroad Company or its subsidiary companies and subject to the lien of the mortgage, or securities representing the same, at the rate of \$1,000 principal amount of bonds for each \$1,000 of authorized expenditures for the purposes aforesaid, or liabilities incurred therefor. The mortgage also provides for the issuance of bonds sold for cash, against the deposit of the net cash proceeds with the Mortgage Trustees, subject to being withdrawn by the Railroad Company for the purposes above stated to the extent of the net proceeds of each \$1,000 principal amount of bonds so sold for each \$1,000 principal amount of bonds which might have been authenticated against such expenditures or liabilities.

The mortgage also provides that bonds of any series outstanding may be replaced by bonds of another series to a like aggregate principal amount,

(Testimony of M. J. Curry.)

either upon surrender of the outstanding series for cancellation or upon redemption thereof. The mortgage further provides for the issuance of new bonds to replace bonds mutilated, lost or destroyed, upon proper proof and satisfactory indemnity.

Changes in Capitalization

Since June 30, 1927 (the date as of which the consolidated balance sheet contained in said previous application A-7722 was made) there has been no change in the amount of Capital Stock or funded debt of the Railroad Company authorized and outstanding, except,

First: The issuance of the \$2,950,000 of Series A 5% Bonds covered by said application A-7722, and

Second: The purchase of \$100,000 face amount of the Series "A" 5% Bonds, for the sinking fund (making the total amount so purchased \$605,700); and

Third: The retirement of \$750,000 (face amount) of its 5½% Equipment Trust Certificates, Series "B," and \$414,000 (face amount) of its 5½% Equipment Trust Certificates Series "C;" and

Fourth: The increase in authorized capital stock stated in the Railroad Company's Articles of Incorporation from \$75,000,000, divided into 275,000 shares of preferred stock and 475,000 shares of common stock, to \$100,000,000 divided into 400,000 shares of preferred stock

(Testimony of M. J. Curry.)

and 600,000 shares of common stock, all of the par value of \$100 each, by proceedings duly had in accordance with the laws of California on November 15, 1927. None of said authorized increase of \$25,000,000 capital stock has been issued, and none thereof is as yet outstanding. Under date of November 21, 1928, Finance Docket 7113, 8,000 additional shares of the preferred stock were authorized to be issued by the Interstate Commerce Commission, but such authorization has not as yet been exercised. By the same order the Interstate Commerce Commission authorized the issue of \$572,800 additional of Railroad Company's First Mortgage 5% Bonds, but such authorization has not as yet been exercised; and

Fifth: The issuance of the \$5,000,000 of Series A 5% Bonds, listing of which is herein applied for.

Properties

The properties of the Railroad Company are described in the original application for listing of Series "A" Bonds, No. A-4747, dated March 13, 1917, and in the subsequent applications Nos. A-5478, dated June 30, 1921; A-5667, dated May 10, 1922; A-6800, dated July 16, 1925; A-7277, dated September 30, 1926, and A-7722, dated October 31, 1927.

Since June 30, 1927, the following important changes in mileage have occurred:

(Testimony of M. J. Curry.)

Completion of Terminus Branch, 7.92 miles, operation commenced January 4, 1928.

Completion of Connecting Track with Oregon Short Line R. R. at Wells, Nev., 1.18 miles, operation commenced December 7, 1928.

Completion of 20.21 miles additional main line yard, industry and side tracks the operation of which commenced on various dates between July 1, 1927 and December 31, 1928.

Completion of 4.07 miles additional branch line side and spur tracks, the operation of which commenced on various dates between July 1, 1927 and December 31, 1928.

Acquisition of joint interest with other carriers in .64 miles of yard tracks, operation of which commenced on various dates between July 1, 1927 and December 31, 1928.

Abandonment of .39 miles Second Main Track at Williams Loop M. P. 294.14, California, August 29, 1927.

Since June 30, 1927, the Railroad Company has made the following changes in equipment:

1416

A. C. James Co. et al. vs.

(Testimony of M. J. Curry.)

ADDITIONS

Locomotives, switching	4
Freight train cars:	
Stock	202
Flat	2
Caboose	9
Passenger train cars:	
Cafe coaches	4
Construction and maintenance equipment:	
Dump cars	10
Tender cars	2
Locomotive crane	1
Spreader cars	2
Emergency tool car	1
Ditcher flat car	2
Floating equipment: Car float	1
Total additions	240

RETIREMENTS

Freight train cars destroyed and converted:	
Automobile	4
Box	236
Flat	26
Stock	3
Coal	7
Refrigerator	9
Caboose	2
Construction and maintenance equipment:	
Outfit cars	2
Tender flat car	1
Ditcher flat car	2
Total deductions	292

Net total units retired July 1, 1927 to December 31, 1928 52

(Testimony of M. J. Curry.)

Lien

Reference is made to the previous listing applications, Nos. A-4747, A-5478, A-5667, A-6800, A-7277 and A-7722 for a description of the property subject to the lien of the Mortgage prior to July 1, 1927. The property on which the Mortgage constitutes a first lien includes the following:

	Miles
Mileage:	
Main line mileage, San Francisco to Salt Lake City	926.41
Branch lines, main track	125.08
Second main track	2.73
Yard tracks and sidings, etc.	307.61
Total track miles	1,361.83

Equipment:	
Locomotives	148
Passenger cars	13
Freight cars	5,894
Service cars	391
Floating equipment	6
Total	6,452

The foregoing equipment does not include additional unmortgaged equipment covered by Equipment Trust Agreements, Series B and Series C, as follows:

Locomotives	16
Passenger cars	48
Freight cars	3,251
Service cars	1

Securities:

1,000 shares Capital Stock (50% of outstanding) of The Salt Lake City Union Depot and Railroad

(Testimony of M. J. Curry.)

Company, operating the passenger terminal at Salt Lake City, leased to the Railroad Company and the Denver and Rio Grande Western Railroad Company

4,500 shares of the Capital Stock (entire issue) of the Deep Creek Railroad Company, operating a line of railroad in Western Utah, 46 miles

4,005 shares of the Capital Stock (entire issue) of Standard Realty and Development Company, organized to acquire and hold real estate in connection with the construction of the Railroad Company

10,000 shares of the Capital Stock (entire issue) of Sacramento Northern Railway, operating 251.27 miles of main line of railroad in California

\$5,213,475.35 par value First Mortgage 5% Twenty-Year Gold Bonds and Bond Participation Certificates of Sacramento Northern Railroad
Deposited cash in the hands of Mortgage Trustees, as of December 31, 1928—\$51,465.58.

The First Mortgage contains a provision subjecting to its lien after acquired property purchased with bonds or their proceeds and property directly appurtenant to or forming an integral part of the mortgaged railroad, or securities representing the same, also additional securities of subsidiary companies as defined in the Mortgage, but the First Mortgage permits the Railroad Company to acquire with free funds, free from the lien of the Mortgage, additional lines of railroad, branches and extension, equipment and securities.

From July 1, 1927 to December 31, 1928, inclusive, the Railroad Company has expended for road

(Testimony of M. J. Curry.)

and equipment (including the above described equipment) the following amounts:

Road and structures and general expenses	\$3,695,108.56
Equipment	574,320.36
Total	<u>\$4,269,428.92</u>

Dividends

All of the issued and outstanding Capital Stock, consisting of \$47,500,000 par value of Common Stock and \$27,500,000 par value of Preferred Stock, except Directors' qualifying shares of Common Stock, is held by The Western Pacific Railroad Corporation, a Delaware corporation; \$25,000,000 of the authorized capital stock of the Company, consisting of \$12,500,000 of Common Stock and \$12,500,000 of Preferred Stock is not yet issued or outstanding.

The following dividends have been paid on the Preferred and Common Stocks since 1922:

PREFERRED STOCK

Year	Rate	Amount paid
1923	6%	\$1,650,000
1924	6%	1,650,000
1925	7.558%	2,078,450
1926	6%	1,650,000
1927	11½%	412,500
1928		None

COMMON STOCK

Year	Rate	Amount paid
1925	5%	\$2,374,970

Prior to 1925, Railroad Company paid no dividends on its Common Stock.

(Testimony of M. J. Curry.)

FINANCIAL STATEMENTS

The Western Pacific Railroad Company
Capital Stock of Subsidiary Companies Outstanding and Amount Owned
by The Western Pacific Railroad Company

Issuing Company	Par value Capital Stock outstanding	Percentage Owned by Western Pacific	Par value Owned by Western Pacific
Tidewater Southern Railway Com- pany	\$1,176,782.00	97.55%	\$1,147,968.00
Deep Creek Railroad Company	450,000.00	100%	450,000.00
Sacramento Northern Railway	1,000,000.00	100%	1,000,000.00
Standard Realty and Development Company	400,500.00	100%	400,500.00
Western Refrigerator Line	15,000.00	100%	15,000.00
Western Pacific California Railroad Company (subscribed but not issued)	27,500.00	100%	27,500.00

OWNED BY SACRAMENTO NORTHERN RAILWAY

	Par Value Capital Stock outstanding	Percentage owned by Sacramento Northern	Par value owned by Sacramento Northern
West Side Railroad	\$35,000.00	100%	\$35,000.00

OWNED BY STANDARD REALTY & DEVELOPMENT COMPANY

	Par value Capital Stock outstanding	Percentage owned by S. R. & D. Co.	Par value owned by S. R. & D. Co.
Tidewater Southern Railway Com- pany	\$1,176,782.00	.01%	\$95.00

EXCESS OF PAR OVER BOOK VALUE OF STOCKS AND BONDS
OF AFFILIATED COMPANIES AS OF DECEMBER 31, 1928

	Book value	Par value	Excess of par over book value
The Western Pacific Railroad Company:			
Capital Stock:			
Standard Realty & Devel- opment Co.	-\$175,439.78	\$400,500.00	\$225,060.22
Tidewater Southern Rail- way Co.	1,223,848.94	1,147,968.00	\$75,880.94

*Denotes red figures.

(Testimony of M. J. Curry.)

	Book value	Par value	Excess of par over book value
First Mortgage Bonds:			
Sacramento Northern Railroad	3,975,456.13	5,213,475.35	1,238,019.22
Total	<u>\$5,374,744.85</u>	<u>\$6,761,943.35</u>	<u>\$1,387,198.50</u>
Sacramento Northern Railway:			
Capital Stock:			
West Side Railroad	50,000.00	35,000.00	*15,000.00
Standard Realty & Development Co.:			
Capital Stock:			
Tidewater Southern Railway Company	57.00	95.00	38.00
Grand total	<u>\$5,424,801.85</u>	<u>\$6,797,038.35</u>	<u>\$1,372,236.50</u>

THE WESTERN PACIFIC RAILROAD COMPANY AND SUBSIDIARY COMPANIES STATEMENT OF FUNDED DEBT AS OF DECEMBER 31, 1928.

The Western Pacific Railroad Company First Mortgage

Gold Bonds maturing March 1, 1946:

Issued June 26, 1916, Series A, 5%	\$19,628,300.00
Issued May 31, 1921, Series A, 5%	4,096,000.00
Issued April 24, 1925, Series A, 5%	3,950,000.00
Issued December 1 and 31, 1926, Series A, 5%	2,600,000.00
Issued September 1 and October 18, 1927, Series A, 5%	2,950,000.00

Total amount outstanding December 31, 1928

\$33,224,300.00

The Western Pacific Railroad Company 5½% Equipment Trust Certificates, Series "B":

Total amount issued February 21, 1923	\$5,600,000.00
Par value maturing serially on the first day of March in each year from 1924 to 1937 inclusive	375,000.00
Par value maturing on March 1, 1938	350,000.00

Total amount outstanding December 31, 1928

\$3,725,000.00

*Denotes red figures.

(Testimony of M. J. Curry.)

The Western Pacific Railroad Company 5½%
Equipment Trust Certificates, Series
"C"

Total amount issued March 10, 1924..... \$3,105,000.00

Par value maturing serially on the first day
of December in each year from 1924 to
1938 inclusive 207,000.00

Total amount outstanding December 31, 1928..... \$2,070,000.00

Tidewater Southern Railway Company First Mortgage
Thirty-Year Five Per Cent. Gold Bonds maturing
April 15, 1942, issued April 15, 1912:

Total amount outstanding December 31, 1928..... 201,000.00

Sacramento Northern Railroad First Mortgage
Twenty Year Five Per Cent. Gold
Bonds issued July 1, 1918, and maturing
July 1, 1938, payment of which has been
assumed by Sacramento Northern Rail-
way (subsidiary of Railroad Company)
the successor in ownership of all the
property of the Sacramento Northern Rail-
road:

Total amount outstanding December 31,
1928 \$5,224,373.14

Less amount owned by The Western Pa-
cific Railroad Company and pledged un-
der its said First Mortgage..... 5,213,475.35

10,897.79

Amount of note of Bisbee Investment Company date Janu-
ary 14, 1925, in favor of California Trust and Savings
Bank, maturing in installments due on various dates
up to October 1, 1934, secured by mortgage on union
passenger station property of Sacramento Northern
Railway in the City of Sacramento, which property
was acquired by said Railway subject to said mortgage,
which must be paid by Sacramento Northern Railway,
outstanding on December 31, 1928.....

65,000.00

(Testimony of M. J. Curry.)

THE WESTERN PACIFIC RAILROAD COMPANY AND SUBSIDIARY COMPANIES CONSOLIDATED INCOME ACCOUNT FOR YEAR ENDED DECEMBER 31, 1927, AND YEAR ENDED DECEMBER 31, 1928.

	Year ended Dec. 31, 1927	Year ended Dec. 31, 1928
Freight revenue	\$14,764,612.09	\$15,974,136.62
Passenger revenue	2,062,207.84	1,870,789.89
Mail and express revenue	428,939.77	476,943.11
Miscellaneous revenue	1,054,808.43	1,099,981.29
Total revenue	<u>\$18,310,568.13</u>	<u>\$19,421,850.91</u>
Expenses—Operating	\$14,525,620.22	\$15,602,657.24
Taxes	1,660,794.02	1,312,850.80
Uncollectible railway revenues	805.64	889.85
Operating income	<u>\$2,123,348.25</u>	<u>\$2,505,453.02</u>
Other income:		
Rental of property	\$545,258.52	\$605,940.13
Hire of equipment, receipts	1,404,529.80	1,335,765.29
Dividend income	305.00	7,725.00
Income from funded securities	18,039.58	39,168.39
Income from unfunded securities and accounts	71,057.23	115,067.72
Miscellaneous income	250.46	412.65
Gross income	<u>\$4,162,588.84</u>	<u>\$4,609,582.20</u>
Income deductions:		
Interest on funded debt, First Mort- gage Bonds	\$1,682,571.15	\$1,675,917.28
Interest on funded debt, Equipment Notes	362,989.61	332,598.75
Interest on funded debt, advances	106,293.44	294,821.63
Rental of leased property	200,309.27	222,956.94
Hire of equipment, payments	1,140,605.65	1,265,994.06

(Testimony of M. J. Curry.)

Miscellaneous deductions	26,680.93	40,692.37
Amortization of, discount on funded debt	128,060.82	124,441.73
Total deductions	\$3,647,510.87	\$3,957,422.76
Net income	<u>\$515,277.97</u>	<u>\$652,109.44</u>
Earned per share on Common Stock		

THE WESTERN PACIFIC RAILROAD COMPANY AND SUBSIDIARY
COMPANIES ANALYSIS OF SURPLUS ACCOUNT CHANGES
—DECEMBER 31, 1926, TO DECEMBER 31, 1928.

	Year ending Dec. 31, 1927	Year ending Dec. 31, 1928	Consolidated total
Net income	\$515,277.97	\$652,109.44	\$1,167,387.41
Add: Net miscellaneous credits	1,850.72	72,164.32	74,015.04
Total	<u>\$517,128.69</u>	<u>\$724,273.76</u>	<u>\$1,241,402.45</u>
Deduct:			
Net miscellaneous debits	\$165,528.29	\$12,264.59	\$177,792.88
Dividends on Preferred Stock	412,500.00	None	412,500.00
Total deductions	<u>\$578,028.29</u>	<u>\$12,264.59</u>	<u>\$590,292.88</u>
Surplus—Increase	<u>\$60,899.60*</u>	<u>\$712,009.17</u>	<u>\$651,109.57</u>
Surplus credit balance— December 31, 1928	\$7,168,949.18		
Surplus credit balance— December 31, 1926	<u>+6,517,839.61</u>		
Increase	<u>\$651,109.57</u>		

*Denotes italic figures.

†Includes West Side R.R. Co. not included in combined statements.
application A-7722.

(Testimony of M. J. Curry.)

CONSOLIDATED GENERAL BALANCE SHEET DECEMBER 31,
1927, AND DECEMBER 31, 1928

ASSETS

	Dec. 31, 1927	Dec. 31, 1928
Investments:		
Investment in railroad and equipment	\$128,605,893.38	\$134,075,252.17
Investment in real estate and improve- ments	876,598.27	1,050,431.10
Sinking funds	50,331.40	50,687.38
Deposits in lieu of mortgaged prop- erty sold	5,008.60	13,134.59
Miscellaneous physical property	959,211.25	1,411,492.00
Other investments	991,791.26	1,623,064.83
Total investments	\$131,488,834.16	\$138,224,062.07
Current assets:		
Cash	\$1,539,970.68	\$2,030,070.21
Deposits of mortgage trust funds	410,475.35	40,841.46
Deposits of equipment trust funds	46,695.92	46,695.92
Special deposits	146,911.14	156,215.94
Traffic and car service balances receiv- able	465,546.93	706,522.76
Net balances receivable from agents and conductors	187,459.11	210,984.33
Miscellaneous accounts receivable	1,198,490.51	1,320,103.13
Material and supplies	2,770,653.06	3,134,174.82
Interest and dividends receivable	12,157.92	12,246.65
Other current assets	164.74	14.74
Total current assets	\$6,778,525.33	\$7,657,869.96
Deferred assets:		
Working fund advances	6,787.81	5,382.39
Total deferred assets	\$6,787.81	\$5,382.39

(Testimony of M. J. Curry.)

	Dec. 31, 1927	Dec. 31, 1928
Unadjusted debits:		
Rents and insurance premiums paid in advance	\$41,765.24	\$49,415.96
Discount on funded debt	2,057,345.41	1,927,374.82
Other unadjusted debits	949,796.22	830,464.85
Total unadjusted debits	\$3,048,906.87	\$2,807,254.73
Total assets	\$141,323,054.17	\$148,694,569.15
Excess of par value over book value of capital stock and bonds of subsidiary companies	1,366,659.83	1,372,236.50
	<u>\$139,956,394.34</u>	<u>\$147,322,332.65</u>

LIABILITIES

Capital stock:		
Common	\$47,528,814.00	\$47,528,719.00
Preferred	27,500,000.00	27,500,000.00
Premium on capital stock	498,238.00	498,238.00
Total stock	\$75,527,052.00	\$75,526,957.00
Long term debt:		
Funded debt (First Mortgage Gold Bonds)	\$33,580,135.35	\$33,501,197.79
Funded debt (Equipment Trust Certificates)	6,377,000.00	5,795,000.00
Total long term debt	\$39,957,135.35	\$39,296,197.79
Debt to affiliated companies: Open accounts	3,064,029.85	8,526,646.43
Total debt to affiliated companies	\$3,064,029.85	\$8,526,646.43
Current liabilities:		
Loans and notes payable	140,000.00	1,034,260.06
Traffic and car service balances payable	383,086.90	582,701.67
Audited accounts and wages payable	1,027,064.58	1,205,613.01
Miscellaneous accounts payable	293,380.45	247,345.27

(Testimony of M. J. Curry.)

	Dec. 31, 1927	Dec. 31, 1928
Interest matured unpaid	16,019.28	14,009.78
Funded debt matured unpaid		11,100.00
Unmatured interest accrued	628,343.95	665,549.21
Unmatured rents accrued	4,962.48	4,883.32
Other current liabilities	78,283.53	84,442.93
Total current liabilities	\$2,571,141.17	\$3,849,905.19
Deferred liabilities: Other deferred liabilities	87,980.97	26,913.19
Total deferred liabilities	\$87,980.97	\$26,913.19
Unadjusted credits:		
Tax liability	284,325.74	277,018.09
Accrued depreciation—Equipment	4,427,232.79	5,244,744.98
Other unadjusted credits	408,999.67	233,444.01
Surplus—Investment, equipment and other property purchased	7,171,556.79	7,171,556.79
Total unadjusted credits	\$12,292,114.99	\$12,926,763.87
Surplus:		
Additions to property through income and surplus	\$5,156,941.92	\$5,786,743.36
Funded debt retired through income and surplus	449,928.73	499,928.73
Sinking fund reserves	284,788.57	319,102.88
Profit and loss balance	565,280.79	563,174.21
Total surplus	\$6,456,940.01	\$7,168,949.18
Total liabilities	\$139,956,394.34	\$147,322,332.65

Policy as to Depreciation

No specific amount is set aside either monthly or annually on account of depreciation of roadway or structures, but all such property is fully maintained and when retired or replaced is written off out of capital account.

(Testimony of M. J. Curry.)

With respect to equipment, charges are made monthly to operating expenses and corresponding amounts credited to "Accrued depreciation equipment," at a general rate of 3% per annum on the original cost of the equipment.

Agreements

The Western Pacific Railroad Company agrees with the New York Stock Exchange as follows:

Not to dispose of an integral asset or its stock interest in any constituent, subsidiary, owned or controlled company, or allow any of said constituent, subsidiary, owned or controlled companies to dispose of an integral asset or stock interest in other companies unless for retirement and cancellation, without notice to the Stock Exchange.

To publish statement of earnings monthly,

To publish once in each year and submit to the stockholders, at least fifteen days in advance of the annual meeting of the Corporation, a statement of its financial condition, a consolidated income account covering the previous fiscal year; and a consolidated balance sheet showing assets and liabilities at the end of the year; or an income account and balance sheet of the parent company and all constituent, subsidiary, owned or controlled companies, subject to I. C. C. regulations.

To maintain, in accordance with the rules of the Stock Exchange, a transfer office or agency in the Borough of Manhattan, City of New York, where all listed securities shall be directly transferable,

and the principal of all listed securities with interest or dividends thereon shall be payable; also a registry office in the Borough of Manhattan, City of New York, other than its transfer office, or agency in said city, where all listed securities shall be registered.

To notify the Stock Exchange thirty days in advance of the effective date of any change in the authorized amounts of listed securities.

Not to make any change in listed securities or of a trustee of its bonds or other securities, without the approval of the Committee on Stock List, and not to select as a trustee an officer or director of the Company.

To notify the Stock Exchange in the event of the issuance or creation in any form or manner of any rights to subscribe to, or to be allotted its securities, or of any other rights or benefits pertaining to ownership in its listed securities, so as to afford the holders of its listed securities a proper period within which to record their interests, and that all such rights to subscribe or to receive allotments and all other such rights and benefits shall be transferable; and shall be transferable, payable and deliverable in the Borough of Manhattan, City of New York.

To notify the Stock Exchange of the issuance of additional amounts of listed securities, and make immediate application for the listing thereof.

To publish promptly to holders of listed bonds and stocks any action in respect to interest on bonds, dividends on shares, or allotment of rights for sub-

(Testimony of M. J. Curry.)

scription to securities, notices thereof to be sent to the Stock Exchange, and to give to the Stock Exchange at least ten days' notice in advance of the closing of the transfer books or extensions, or the taking of a record of holders for any purpose.

To redeem Preferred Stock in accordance with the requirements.

To notify the Stock Exchange if deposited collateral is changed or removed.

To have on hand at all times a sufficient supply of bonds to meet the demands for transfer.

General

The fiscal year of the Railroad Company ends on the 31st day of December.

The principal office of the Company is in the Mills Building, San Francisco, Cal.

The annual meeting of stockholders is held on the last Wednesday in March at the principal office of the Railroad Company in San Francisco, Cal.

The names and addresses of the Directors, whose terms expire March 26, 1930, are: Arthur Curtiss James, Thomas M. Schumacher, Arthur W. Loasby and Winthrop W. Aldrich, of New York, N. Y.; Frank E. Sullivan, William Fries, J. G. Hooper, Scott F. Ennis, Wellington T. Smith, W. L. Hughson, H. M. Adams, A. R. Baldwin and F. M. Angelotti, of San Francisco, Cal.; John L. Nagle, of Sacramento, Cal.; Charles Elsey, of Oakland, Cal.; Frédéric E. Williamson and James E. Gorman, of

(Testimony of M. J. Curry.)

Chicago, Ill.; L. W. Baldwin, of St. Louis, Mo.; and C. W. Nibley, of Salt Lake City, Utah.

The Executive Committee is: Arthur Curtiss James, Arthur W. Loasby, Winthrop W. Aldrich, and Thomas M. Schumacher, Chairman; and H. M. Adams, President ex-officio.

The Officers of the Railroad Company are: Chairman of the Board, Arthur Curtiss James; Chairman of the Executive Committee, Thomas M. Schumacher; President, H. M. Adams; Vice-Presidents, Charles Elsey, E. W. Mason and M. J. Curry; Secretary, W. G. Bruen; Treasurer, E. C. Bates; Assistant Secretary and Assistant Treasurer, M. J. Curry; Assistant Secretary, Thomas J. Byrne.

The bonds may be transferred and registered at The Equitable Trust Company of New York, 37 Wall Street, New York, N. Y.

The Agents for the payment of interest are The Equitable Trust Company of New York, and Crocker First Federal Trust Company of San Francisco, Cal.

The place for the payment of the principal is at the office of The Equitable Trust Company of New York.

**THE WESTERN PACIFIC
RAILROAD COMPANY,**

By **M. J. CURRY,**

Vice-President.

This Committee recommends that the above-mentioned \$5,000,000 First Mortgage 5% Gold Bonds,

(Testimony of M. J. Curry.)

Series A, due March 1, 1946; included in Nos. M-32966 to M-37965, for \$1,000 each, (and registered bonds issued in exchange for coupon bonds) be added to the list on official notice of issuance for sale and distribution, in accordance with the terms of this application, making the total amount authorized to be listed \$38,730,000.

ROBERT GIBSON,

Chairman.

Adopted by the Governing Committee, June 12, 1929.

ASHBEL GREEN,

Secretary.

[Endorsed]: United States District Court, No. 26591. Western Pac. R. R. Co., vs. Irving Trust Co. Exhibit No. 9. Filed 1/22/1940. Walter B. Maling, Clerk.

Mr. McCollum: And the statement of July 1, 1930 as Irving Trust Company Exhibit 10.

(The document was marked "Irving Trust Company's Exhibit 10.")

